4557

SUPREME COURT OF THE UNITED STATES.

No. 93.

NOEL JOURDAN AND JOSEPH LANDRY, PLAINTIFFS IN ERROR,

vs.

THOMAS BARRETT AND AL.

IN ERROR TO THE SUPREME COURT OF LOUISIANA FOR THE EASTERN DISTRICT.

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J. & G. S. Gideon, printers.

To the honorable the judges of the Supreme Court of the State of Louisiana.

The petition of Noel Jourdan, Joseph Landry, and J. Aristide Landry, respectfully shews:

That your honorable court has heretofore rendered a final judgment in the suit in which your petitioners, Noel Jourdan and Joseph Landry were plaintiffs, and Thomas Barrett defendant, and Michel Dorordon Bringier, and the heirs of Wade Hampton, to wit, Mary Hampton, the widow of said Wade Hampton, Caroline M. Hampton, wife of John S. Preston, and Suzan F. Hampton, wife [of] John L. Manning, were called in warranty, and which is suit No. 3,354 on the docket of this court, that they are advised that there is error, to their prejudice, in said judgment; that this court is the highest court of law or equity in the State of Louisiana, in which a decision could be had in the aforesaid suit; that in said suit the validity of a statute of, and an authority exercised under, the United States, is drawn in question, and the aforesaid decision is against the validity of said statute or authority; that in said suit is furthermore drawn in question the construction of a clause of a statute of, and commission held under, the United States, and the said decision is against the title, right, and privilege specially claimed and set up under such clause of said statute and commission, all of which appears on the face of the record of said suit; that accordingly, a writ of error lies from said final judgment to the honorable the Supreme Court of the United States.

The petitioner, Joseph Landry, shews that the land claimed by him, in his original petition, is now the property of the petitioner, J. Aristide Landry, who claims the same under the petitioner, Joseph Landry, and that both of them presently unite in suing out a writ of error from the aforesaid judgment.

And your petitioners shew that Thomas Barrett, the original defendant in the aforesaid suit, has heretofore taken the benefit of the insolvent laws of Louisiana; that James B. Huttin, of New Orleans, has been appointed the syndic of his creditors in said insolvent proceedings; that the said syndic has not yet been discharged; that all the right, title, and interest which said Barrett had in the land claimed in the petition filed in this suit was, subsequently to the aforesaid decision, sold to Robert Bell; that said Bell died lately, leaving his widow, Caroline S. Butler, his executor and sole heir; and that said Caroline, his widow, now claims to be in possession, and the owner of the property.

The petitioners pray that a writ of error may be allowed to them, with citations, to be served on all the aforesaid parties, and returnable to the Supreme Court of the United States, upon their giving security as the law directs.

L. JANIN, *Att'y for petitioners.*

Let the writ of error be allowed according to law.

The petitioners to give bond and security in the sum of five hundred dollars.

F. X. MARTIN.

Supreme court, filed December 18, 1843.

CHAS. L. DUROCHER, *Clerk.*

THE UNITED STATES OF AMERICA.

The President of the United States of America, to the honorable the judges of the supreme court of the State of Louisiana, for the eastern district, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in said court, being the highest court of law or equity in the said State in which a decision could be had in the said suit, between Noel Jourdan and Joseph Landry, appellants, and Thomas Barrett, Michel Doradon Bringier, and the heirs of Wade Hampton, to wit, Mary Hampton, widow of said Hampton, Caroline M. Hampton, wife of John S. Preston, and Suzan F. Hampton, now the wife of John L. Manning, appellees, where is drawn in question the validity of a statute of, and an authority exercised under, the United States, and the aforesaid decision is against the validity of the said statute or authority; also, where is drawn in question the construction of a clause of a statute of, and commission held under, the United States; and the said decision is against the title, right, and privilege specially claimed and set up under such clause of said statute and commission, a manifest error hath happened, to the great damage of appellants, as by their complaint appears—we being willing that error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, together with this writ, to the Supreme Court of the United States, so that you have the same at Washington, on the second Monday of January next, in the said Supreme Court to be then and there held, that the record and proceedings being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this twentieth day of December, in the year of our Lord eighteen hundred and forty-three.

[SEAL.]

CHAS. L. DUROCHER,

Clerk of the supreme court of Louisiana, eastern district.

Supreme Court, filed Dec'r 20th, 1843.

CHAS. L. DUROCHER.

Copy of the writ of error lodged in the clerk's office of the supreme court of the State of Louisiana, for the eastern district, in pursuance of the statute in such case made and provided.

L. JANIN,

Att'y for plaintiffs in error.

UNITED STATES OF AMERICA.

To Thos. Barrett, J. B. Hullin, syndic of said Barrett's creditors, Michel Doradon Bringier, Caroline S. Butler, widow of Robert Bell, deceased, and his executrix and sole heir, and the heirs of Wade Hampton, to wit, Mary Hampton, widow of said Hampton, Caroline M. Hampton, wife of John S. Preston, and Suzan F. Hampton, now wife of John L. Manning, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the 2nd Monday of January next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana for the eastern district, wherein Noel Jourdan, Joseph Landry, and J. Aristide Landry, are plaintiffs in error, and you are defendants in error, to shew cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this twentieth day of December, in the year of our Lord eighteen hundred and forty-three.

F. X. MARTIN. [L. S.]

John T. Sibley, United States deputy marshal for the eastern district of Louisiana, being duly sworn, declares, that he served the within citation in error on each of the defendants, to wit: on Caroline S. Butler, widow, executrix and sole heir of Robert Bell, on the 28th Dec'r, 1843, by delivering a certified copy of this original citation to Robert Bell, jr., her adopted son, a free white person, over the age of 14 years, and exhibiting and reading to him this original on the plantation belonging to the said Mrs. Bell and Col. R. C. Nicholas, situated in the parish of St. James, 66 miles from the city of New Orleans.

And also served the within citation in error, by delivering a copy thereof, duly certified, to Henry Sorrel, a free white person, over the age of fourteen years, on a plantation lying in the parish of St. James, two miles above the above mentioned plantation of Mrs. Bell and Col. R. C. Nicholas, and at the same time exhibiting and reading to him this original citation; the said Mrs. Bell having resided upon the plantation of the said H'y Sorrel from the 1st January, 1842, to the 1 July, 1843, when she temporarily absented herself from the State, and having shortly previous to her aforesaid departure taken up her residence upon the plantation belonging to herself and said Col. Nicholas, and being still absent from the State, though, as I was informed by said Robert Bell, jr., and said Henry Sorrell, daily expected to return.

Also, served said within citation in error on Mary Hampton, the widow of the late General Hampton, on Caroline M. Hampton, the wife of John S. Preston, and Suzan F. *Preston*, the wife of John L. Manning, by delivering a certified copy of said citation, and shewing and reading the original citation to John S. Preston, at New Orleans, the 29th December, 1843, the said John S. Preston being the husband of

one, and attorney in fact of all, said last mentioned three persons, who reside, and now are, out of the State of Louisiana.

Also, served the within citation in error, upon Michel Douradon Bringier, by delivering to him a certified copy of same, and reading and exhibiting to him the original, in person, in New Orleans, on the 29th day Dec'r, 1843.

Also, served the within citation in error upon Thos. Barrett and James B. Hullin, syndic of said Barrett's creditors, by delivering a certified copy to each, and by exhibiting and reading to them the original, in New Orleans, on the 29th day of December, A. D. 1843.

Service made, as above stated, on Col. R. C. Nicholas and Mrs. Bell's plantation, and on that of Henry Sorrell, and at New Orleans, on the 28th and 29th days of December, A. D. 1843.

JNO. T. SIBLEY.

Sworn to and subscribed before me, this 30th December, 1843.

DUNCAN N. HENNEN,
Clerk eastern district Louisiana, and U. S. commissioner.

Know all men by these presents, that we, Noel Jourdan, Joseph Landry, and J. Aristide Landry, as principals, and P. T. Landry, as security, are held and firmly bound unto Thomas Barrett, J. B. Hullin, syndic of said Barrett's creditors, Michel Doradon Bringer, Caroline S. Butler, widow of Robert Bell, deceased, and his executrix and sole heir, and the heirs of Wade Hampton, to wit, Mary Hampton, widow of said Wade, Caroline M. Hampton, wife of John Preston, and Suzan F. Hampton, wife of John L. Manning, in the full and just sum of five hundred dollars, to be paid to the said Thomas Barrett, J. B. Hullin, Michel Donadon Bringier, Caroline S. Butler, widow of Robert Bell, deceased, and the said Mary Hampton, widow of Wade Hampton, Caroline M. Hampton, wife of John S. Preston, and Suzan F. Hampton, wife of John L. Manning, certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this 20th day of December, in the year of our Lord eighteen hundred and forty-three.

Whereas lately, in the supreme court of the State of Louisiana, for the eastern district, in a suit depending in said court, between Noel Jourdan and Joseph Landry, appellants, and Thomas Barrett, Michel Doradon Bringer, and the heirs of Wade Hampton, to wit, Mary Hampton, widow of said Wade, Caroline M. Hampton, wife of John S. Preston, and the said Suzan F. Preston, now the wife of John L. Manning, appellees, judgment was rendered against said Noel Jourdan and Joseph Landry, appellants; and the said appellants, and with them J. Aristide Landry, having obtained a writ, and filed a copy thereof in the clerk's office of the said court, to reverse the judgment rendered in the aforesaid suit, and a citation directed to the aforesaid appellees; also, to J. B. Hullin, syndic of the creditors of said Thomas Barrett, and to Caroline S. Butler, widow of Robert Bell, deceased, and his executrix and sole heir, citing and admon-

ishing to be and appear at a Supreme Court of the United States, to be holden at Washington the Monday of next.

Now, the condition of the above obligation is such, that if the said Noel Jourdan, Joseph Landry and J. Aristide Landry, shall prosecute their writ to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

Signed, J. ARISTIDE LANDRY,
J'PH LANDRY,
NOEL JOURDAN,
P. T. LANDRY.

Sealed and delivered in presence of—
Signed, LS. JANIN.

Approved by me senior, and as such chief justice of the supreme court of Louisiana.

New Orleans, 25 December, 1843.
Signed, F. X. MARTIN.

I hereby certify the foregoing to be a true copy of the bond for a writ of error filed and deposited in my office, the 26th December, 1843.
[SEAL.] CHAS. L. DUROCHER,
Clk S. Ct. La. E. D.

UNITED STATES OF AMERICA,
Supreme court, E. D., State of Louisiana:

Copy of the proceedings had in the district court for the first judicial district, and in the supreme court of the State of Louisiana for the eastern district, in a certain suit, wherein Noel Jourdan and Joseph Landry were plaintiffs and appellants, and Thomas Barrett and others were defendants and appellees.

STATE OF LOUISIANA, *First judicial district court:*

NOEL JOURDAN
vs. } No. 15,277.
THOMAS BARRETT.

Petition filed 1st February, 1838.

To the honorable the district court in and for the first judicial district of the State of Louisiana, in and for the parish of Orleans.

The petition of Noel Jordan, residing in the parish of St. , and State of Louisiana, respectfully represents: that, on or before the day of , he was, and now is, the legal owner and possessor of a certain tract of land situated and being in the said parish, on the east bank of the river Mississippi, with a front on said river of eight arpens, more or less, upon the ordinary depth of forty arpens, bounded above by land of , and below by lands formerly belonging to the succession of Jean Baptiste Chiapron.

Your petitioner further represents, that said tract of land was duly con-

firmed by the Government of the United States in favor of John Charles Arcenaux and , under number one hundred and thirty-nine, and , under whom, by a regular chain of title, your petitioner holds said land; and that the said tract is represented as section number thirty-eight, in township number eleven, of range number three east, in the surveys made by authority of the Government of the United States.

Your petitioner further represents, that, in virtue of an act, or of various acts of Congress, he was entitled to a preference in becoming a purchaser of any vacant lands adjacent to, and back of, his said front track, not exceeding forty arpens in depth; and that, in virtue of his said rights, under said act or acts of Congress, your petitioner did, on the ninth day of August, 1834, purchase from the United States, and enter a certain tract of land lying adjacent to, and back of, his said front track, containing two hundred and sixty-nine $\frac{44}{100}$ superficial acres, and designated in the surveys made by authority of the United States, as section number sixty-three, in township number eleven, of range No. three east.

Now your petitioner avers, that, notwithstanding the premises by means whereof your petitioner is the absolute owner and legal proprietor of said tract of back land, that Thomas Barrett, residing in the city and parish of New Orleans, has taken possession of a part of said tract, pretending to be the owner thereof—which said part contains thirty-three superficial acres, more or less; and that he has committed, and is committing now, waste thereon, by cutting thereon timber growing on the same, to your petitioner's damage five hundred dollars.

Your petitioner further represents, that the said portion of the said land so taken possession of by the said Thomas Barrett, is worth one thousand dollars; and that he, the said Barrett, refuses to deliver the same to your petitioner, and to pay said damages, though often amicably requested so to do.

Wherefore, your petitioner prays, that the said Barrett may be cited before the honorable court within the legal delay; and, after all legal proceedings had, your petitioner may be adjudged and decreed to be the absolute owner of said tract of back land so purchased as aforesaid by your petitioner; and that the said Barrett may be ordered and decreed to deliver the part of said tract of [land] so illegally taken possession of by him as aforesaid, into the possession of your petitioner; and that he may be condemned to pay to your petitioner the sum of five hundred dollars, amount of damages suffered by your petitioner as aforesaid, together with the costs of this suit.

Your petitioner further prays all other and further relief that justice, equity, and the nature of the case may require.

(Signed) BEN. WINCHESTER,
Atty. for pet'r.

N. Orleans, 6th January, 1838. Service accepted.
L. PIERCE,
For Thos. Barrett.

Documents filed with petition.

SECOND DISTRICT COURT, *parish of St. James:*

NOEL JOURDAN
vs.
R. BELL and T. BARRETT and als.

Interrogatories to be propounded on the part of the plaintiff in the above entitled cause to Col. J. Williams, surveyor general of the United States for the State of Louisiana, and others.

1st. Are you, or are you not, surveyor general of the United States for the State of Louisiana?

2d. Did you, or did you not, in your said official capacity, order, and have made, a survey of the double concession to the front lands bordering on the east bank of the Mississippi river, in the parish of St. James, represented in the plats of the surveys of the United States as lying in township 11, range 3 east?

3d. Was there, or was there not, a sufficient quantity of land lying back of, and adjacent to, the front tracts, lying in that part of said township and range of surveys of the United States above referred to, to give to each front proprietor the maximum quantity that he was authorized to purchase, by way of preference, from the United States, in virtue of an act entitled "An act providing for the final adjustment of claims to lands, of the sale of *the sale of* public lands in the territories of Orleans and Louisiana, and to repeal the act passed for the same purpose, and approved February 15th, 1811, and approved the 3d March, 1811, and of the several acts reviving and continuing in force, for a limited time, the aforesaid act of the 3d of March, 1811, and particularly the 5th section of said act? And if there was not, state behind what front acts there was not a sufficiency of land.

4th. If there was not a sufficiency of public land back of and adjacent to any of the front tracts in the part of said township referred to, state them. If you did, or did not, in virtue of the power vested in you by law, divide the said land among the front proprietors in the manner that to you appeared the most equitable, and in conformity with said act?

5th. If you did divide the said land between the said proprietors, (front,) then have the goodness to annex to your answer to these interrogatories a certified plat of that part of said township, above referred to, showing the situation of the front tracts; and likewise showing the division made by you of the said back lands among them, with the direction of the lines bounding their respective portions, and the quantity in acres to which they are respectively entitled under said acts of Congress. Represent, also, upon said plat the lines which M. D. Bringier claims the double concession to what is known as the White Hall tract in St. James, so as to show its interference with other claims or tracts.

6th. Was or was there not any survey or division of the said back lands made and approved in conformity of law, previous to the survey and division of them made under your authority?

7th. State generally all the facts within your knowledge relative to

the division of the land lying back of and adjacent to the front lands in that part of said township, as fully as though interrogated specially in relation thereto.

Signed WINCHESTER & TAYLOR,
For plaintiffs.

Reserving legal exceptions to any testimony taken under the foregoing interrogatories, the following interrogatories are propounded on behalf of the representatives of General Wade Hampton:

1st. Was not J. Willson, in the year 1822, principal deputy surveyor of the United States for the eastern land district of Louisiana?

Did he not, in the month of December, 1822, survey for M. D. Bringier a vacant tract of land adjacent to and back of his plantation on the left bank of the Mississippi river, in the parish of St. James, now called Whitehall, and owned by the defendant?

Did not said survey contain five hundred and ten superficial acres, being less than the superficial contents of the front tract; and did the survey exceed forty arpens in depth?

2d. Was not said survey returned to the hands of the surveyor of public lands south of Tennessee; and also the township's maps exhibiting the said survey; and was not both approved by him?

Please to annex to your answer a copy of said survey, and any approvals that may have been made of the same.

3d. Was not said survey and the township's maps exhibiting it returned to the land office at New Orleans and the General Land Office?

4th. Have you ever had any authority to locate others than vacant, unappropriated, or unsold lands, for persons claiming to purchase by prescription back tracts in Louisiana?

5th. Look at your township maps, and please to say, if surveys to a very great extent have not been made by Mr. Wilson, Mr. Foster, Mr. Walker, and other deputy surveyors, similar to the survey made by Mr. Willson for Mr. Bringier; and has any change been made of those surveys, or instructions given to change the same?

6th. Please to state the names of all persons who have applied to you to change the survey of the back tract of the Whitehall plantation?

Were you ever solicited to change the survey by Mr. Bell? Please relate every thing that Mr. Bell did or said on the subject, and at what time and place it occurred.

(Signed,) I. T. PRESTON,
Atty. for heirs of Hampton.

Cross interrogatories propounded on the part of M. D. Bringier, called in warranty in this case, to be answered by H. J. Williams, esq., surveyor general of the United States for the State of Louisiana:

1st. After the accounts of deputy surveyors for work done by them are approved, and paid by the surveyor general, does he not transmit the said accounts to the General Land Office; and are not such accounts there re-examined and disallowed, if any fault be found with the surveys?

2d. Were or were not the accounts of Stephen Roberts, Alfred H. Foster, and Joseph N. Walker, deputy surveyors, for work and labor done in surveying the exterior and interior lines of township 11, range 3 east, south east district of Louisiana, allowed and paid by the United States Government through its authorized agents?

3d. Was or was not Gideon Fity, surveyor general of the public lands south of Tennessee, in the year 1832, or during a part of said year; and was he not, whilst in office, invested with the same powers that you now execute in the office you hold under the Government of the United States, so far as regards the approval or disapproval of plats of survey?

4th. After a survey has been approved by the surveyor general, and payment for the same has been allowed at the General Land Office, has not such survey then gone through every form of approval required or requisite to give it due validity?

5th. When the lines of several front tracts converge, and there is not enough of public land to give each of the front proprietors a double concession equal to his front, is not the power exercised by the surveyor general altogether discretionary?

6th. In the apportionment and surveys you have had made of the lands in the rear of the Whitehall plantation, now in the possession of Robert Bell, situate in the parish of St. James, in T. 11, R. 3 E., do not the lines of the double concession to said plantation still diverge?

Interrogatories to be propounded to Harper and others, on the part of the plaintiff in the above entitled cause:

1st. Were you or were you not the register of the land office of the United States for the eastern district of Louisiana, at New Orleans, during the year 1822?

2d. Was or was not the plat of the surveys of the United States of that portion of township No. 11, in range No. 3 east, lying on the east or left hand of the river Mississippi, in the parish of St. James, returned and in existence in your office at any time during the year 1822?

3d. Was there or was there not any plat, made by authority of the United States, of the abovementioned portion of said township in existence during the year 1822, showing the quantity of back land which each of the front proprietors would have been entitled to purchase by way of preferences in virtue of the act of Congress then in force?

4th. If there were no such plats in your office at that time, did you or did you not explain, to all person[s] applying to become the purchasers of land, adjacent to and back of their front tracts, in virtue of acts then in force, and more particularly to M. D. Bringier, then of the parish of St. James, that the quantity of land to which front proprietors were entitled to purchase, could not be determined by you in consequence of the absence of any correct and legal survey; and that the specification of quantity in their application, and in your certificate, was made on their responsibility, and at their request; and, in fine, that if they applied and paid for more land than they were entitled to, under the acts of Con-

gress, that then they would, in truth, acquire title only to the quantity accorded to them by law? If you did not so inform applicants in general, and M. D. Bringier in particular, state what you did tell them.

5th. When the quantity of land, to which the applicant was entitled, was not known, was it not the practice of the land office to allow them to pay for the maximum quantity they might appear to be entitled to purchase, and to leave the absolute quantity purchased to be ascertained by actual measurement, when the surveys of the United States, necessary for that purpose, were completed?

(Signed) WINCHESTER & TAYLOR,
Att'ys for Pltff.

Reserving legal exceptions to any testimony taken under the foregoing interrogatories, the following cross interrogatories are propounded, on behalf of the representatives of General Wade Hampton:

1. Did you not really and truly believe, in selling to M. D. Bringier five hundred and ten acres of land, for his back tract, according to the survey of J. Wilson, on allowing him to enter said tract, according to said survey, that you were authorized to do so by the laws of the United States?

2d. Were there any township maps returned to the land office at New Orleans, as early as the year 1822? Did you believe that the act of 1811, or the act of 1820, reviving the 5th section of that of 1811, could not be carried into full effect, without such township maps? Did you receive any instructions to impose conditions, or subject to qualification entries, made under said acts?

If so, please to state what those instructions were, and where they are to be found.

3d. Did you not positively require, and deem it your duty to require, each applicant to enter, under said laws, the full quantity of his front tract, provided it could be obtained of vacant land, not interfering with any other applicant to enter back tracts?

4th. Did you not allow many entries of back tracts, by which the lines diverged to the rear, where the lines of the front tracts converged to the rear? Did you believe, or was it to your knowledge believed, that such entries were illegal?

5th. Was not much publicity given to the laws of 1820, authorizing the entry of back tracts for two years, to induce persons to avail themselves of their rights to purchase, by pre-emption, their back tracts? Was there the slightest intimation, to your knowledge, given to any body, that if they did not avail themselves of their rights, that there might be a latent right to make entries, under subsequent laws?

(Signed) ISAAC T. PRESTON,
Att'y for the heirs of Wade Hampton.

Agreement of counsel, filed 1st February, 1838.

NOEL JOURDAN,
vs.
THOMAS BARRETT, with the heirs of Hampton and others, on warranty; and
J. LANDRY,
vs.
THS. BARRETT & Co., &c.

It is agreed between the undersigned, counsel in the above entitled cause, that the testimony of H. T. Williams, United States surveyor general of the State of Louisiana, and of Samuel H. Harper, heretofore taken by consent, and filed on the 17th day of April, 1837, in the second judicial district court, for the parish of St. James, in the suit of Noel Jourdan vs. R. Bell and Thos. Barrett, with the heirs of Hampton and others, in warranty, may be withdrawn from said suits, and filed in the present above entitled causes, and read in evidence on the trial of the same; subject only to such exceptions as regard their application to the case, and their legal effects, and shall be filed without delay.

And it is further agreed, that copies of any instructions from the superior officers of the General Government to the registers *of* receivers of the land office in New Orleans, or to the head of the surveying department of the United States, in the State of Louisiana, may be read by either party on the trial of these causes; subject only to such exceptions as regards their application to the case, or their legal effects; provided, said copies shall be duly certified by the officers, who are the depositaries of the originals.

It is also agreed, that copies from the land office at New Orleans, and the surveyor general['s] office at Donaldsonville, of any entries, receipts, or surveys, or plats thereof, may be given in evidence, in place of the originals, if lost or mislaid; provided, the same be duly certified by the officers furnishing them.

All the testimony is to be subject to all legal exceptions, except as to the form or manner of taking the same. All these causes are to be tried on the first Monday in February, if possible, or as soon after as the court will take them up.

(Signed) BEN. WINCHESTER,
Att'y for Plaintiff.
ISAAC T. PRESTON,
Att'y for heirs of Hampton.
JAMES PORTER,
Att'y for M. D. Bringier.
L. PIERCE,
Att'y for Thos. Barrett.

Answer of Thomas Barrett, filed 1st February, 1838.

To the honorable district court of the first district of the State of Louisiana; the answer of Thomas Barrett, residing in New Orleans, to the

petition of Noel Jourdan, filed in this honorable court against him, respectfully shews:

That your respondent is the true, lawful, and only owner of the land described in plaintiff's petition; he denies, all and singular, the allegations in plaintiff's petition contained, and avers in himself a good title, by purchase, from Leroy Pope, on the 18th of March, 1833, by act passed before Wm. Christy, esq., notary public, in and for the parish and city of New Orleans, a duly certified copy of which is annexed, and which this respondent prays may be taken and considered a part of this answer; by which act, as may be seen by reference thereto, the said Pope bound himself to warrant the title to said property, and transferred to this respondent, and expressly subjected him to all his rights in and to said property, and all the rights of action of warranty, which the said Pope had acquired by his purchase of the said property from Wade Hampton, by act of sale, passed before Hugh K. Gordon, esq., a late notary public in and for the said city, on the 8th day of May, 1829, a duly certified copy of which is annexed to the aforesaid answer of this respondent, and which this respondent prays may be taken and considered as part of this answer; by which act the said Wade Hampton sold the plantation, as therein described, (and of which the property now claimed is a part,) to the said Pope, and justly guaranteed the title thereof; which guarantee, being transferred as aforesaid, to this respondent, he now calls the said Leroy Pope, residing in Alabama, and the representatives in Louisiana of the aforesaid Wade Hampton, since deceased, to wit: Mary Hampton, his widow in community; also, Caroline M. Preston, wife of John S. Preston, one of the heirs of the said deceased; and Suzan F. Hampton, also one of the heirs of the said deceased; and Jno. S. Preston, husband of the aforesaid Caroline M. Preston, all living and residing in South Carolina, to warrant and defend him against the plaintiff's claim, and prays, that a citation may issue to their agents in this State, or in case they have none, that this honorable court may appoint an attorney to represent them; and this respondent, reserving all the rights of action which may accrue to him in case of eviction against his said warranters, prays for general relief.

As in duty bound, &c.

(Signed) L. PIERCE, *for Thos. Barrett.*

Answer of the heirs of Wade Hampton, and call in warranty.

To the honorable district court of the first district of the State of Louisiana, in and for the parish of Orleans, the answer of Mary Hampton, widow of the late General Wade Hampton; also of Caroline M. Preston, wife of Jno. S. Preston, and by him duly authorized; also of Suzan F. Hampton, representing by inheritance from General Wade Hampton, and by purchase from his only other heir Col. Wade Hampton, his estate in Louisiana, to the call in warranty of Thomas Barrett upon them, in the suit of Noel Jourdan, against him filed in this honorable court, respectfully shews:

That your respondents deny their liability to warrant Leroy Pope, his

heirs and assigns, or the said Thomas Barrett, against the claim of the plaintiff to any part of five hundred and ten acres of land composing the second depth or back part of the plantation called White Hall, sold by the said Wade Hampton to Leroy Pope, by act passed before Hugh K. Gordon, esq., notary public of the city of New Orleans, on the 8th day of April, 1829, and recorded in the parish of St. James on the 16th day of said month, because they alledge that the said Thomas Barrett and the said Leroy Pope, respectively, when they purchased said tract of land, had a perfect knowledge that the late Wade Hampton derived his title to the said tract of land from the United States, through M. D. Bringier, esq., as the second depth to his White Hall, plantation purchased by pre-emption.

Your respondents claimed the said five hundred and ten acres of land, of which the land now sued for makes a part, by virtue of a legal sale made by the United States to Michael Doradon Bringier, in the year 1822, in pursuance of the fifth section of an act of Congress, passed the third day of March, in the year 1811, entitled an act providing for the final adjustment of claims to lands, and for the sale of the public lands in the territories of Orleans and Louisiana, and to repeal the act passed for the same purpose, approved February 11th, 1811, and revived by the 7th section of an act of Congress entitled an act supplementary to the several acts for the adjustment of land, claims in the State of Louisiana, approved the 11th day of May, 1820, under which acts of Congress your respondents do, and their ancestors did, claim and sell the said five hundred and ten acres of land, which they allege were surveyed and delivered to the Michael Doradon Bringier, by John Willson, the principal deputy surveyor of the United States for this district, on the 17th day of December, 1822. They allege that the said land was afterwards surveyed and delivered to the said Michael Doradon Bringier, by M. F. Righter, on the 10th day of June, 1830, who was then the principal deputy surveyor of the United States for the State of Louisiana; which survey he was duly authorized by law to make, sign, and approve. They further allege that said survey was duly approved by the surveyor general of public lands south of Tennessee, on the 9th day of March, 1832; and your respondents plead the prescription of five years against any proceedings to annul the sale and delivery of said land to Michael D. Bringier through error.

Your respondents deny that the plaintiff has any legal claim or title to any part of the said five hundred and ten acres of land, and especially deny that he acquired title to the land sued for by virtue of the laws mentioned in his petition.

They further plead against the suit and claim of the plaintiffs, the prescription of ten years, founded upon uninterrupted possession in good faith, and by virtue of a just title in their ancestor, his vendor and subsequent vendors, before the institution of this suit. Wherefore your respondents pray judgment in their favor against the demand of the plaintiff, and also against the call in warranty made upon them, and for costs.

They further allege that Michael Doradon Bringier of the parish of Ascension, sold the plantation, called White Hall, to the late Wade Hampton by act of sale passed before Hugh K. Gordon, esq., late a notary public of New Orleans, on the 9th day of February, 1825, and duly recorded in the office of the parish judge of the parish of St. James. By the said acts of sale, the said Bringier bound himself to warrant and defend the title to the said plantation, including the above mentioned five hundred and ten acres of land to the said Wade Hampton, his heirs and assigns, against any claims of all persons whatsoever, which appears by the act of sale, which your respondents pray may be considered as part of this answer, and is liable, by virtue of said warranty, to pay to your respondents all the damages they may suffer in case Thomas Barrett is evicted by this suit.

Wherefore your respondents respectfully pray, that Michael Doradon Bringier may be cited in warranty to appear and defend this suit; and that whatever judgment may be rendered against them, that such judgment may be rendered in their favour against said Bringier as will entirely indemnify them for all the damages they may suffer, and which he is liable to pay to them under his warranty aforesaid.

And your respondents pray for all such other and further relief as justice, equity, and the nature of their case, may require.

As in duty bound, &c.

(S'g'd) ISAAC T. PRESTON, *Att'y.*

Answer of M. D. Bringier, filed 1st Feb., 1838.

To the honorable the district court of the first judicial district of the State of Louisiana, in and for the parish of New Orleans.

The answer of Michael Doradon Bringier, of the parish of Ascension, in answer to the petition filed against Thomas Barrett; and also in answer to the call in warranty made upon this respondent in the same suit by Mary Hampton, widow of the late Wade Hampton; also of Caroline M. Preston, wife of Jno. S. Preston, and by him duly authorized, and Suzann F. Hampton, respectfully shews:

That he comes into court by the undersigned his counsel, and reserving to himself the benefit of all exceptions, says, he denies all the facts and allegations therein contained, except what may be hereinafter specially and expressly admitted. And for further answer he says, that he makes the same defence to this action which has been made by the heirs of Hampton in their answer. That your respondent claims the land now sued for, as owner and proprietor of the same by virtue of a sale made to him from the United States by and through their regular and constituted officers, duly empowered to sell the same; that is to say, he bought the said land, and paid the receiver of public monies for the same on the 13th April, 1832; and the said land was afterwards surveyed by the principal deputy surveyor of the United States, and delivered to him; and the said survey was afterwards approved of by the proper officer of the United States. He further alleges that he, and those claiming under him, have been in actual peaceable and uninterrupted posses-

sion, ever since the date of said survey, down to the present time; and he opposes to the claims of the plaintiffs the prescription of ten years, founded on the just title above set forth, and the possession as alleged. He further says, that if the plaintiff should recover in the present suit, yet the heirs of Hampton have no legal grounds of action against this respondent, nor is he responsible to them in warranty.

That the said Hampton bought the said land with a perfect knowledge of respondent's titles, which were exhibited to him on the day of sale, and previous to signing the same, with which the said Hampton was then and there perfectly satisfied. Your respondent further alleges, that he has sustained damages by this vexatory suit, to the amount of five thousand dollars, and which he pleads in reconvention, and prays judgment for the same.

He also alleges the value of the improvements made on said land to be five thousand dollars, which he also pleads in reconvention, and for which he also prays judgment; though, if any title should be produced by the plaintiff from the United States, or from any person or persons whatsoever, the same are fraudulent and void, and were obtained with a knowledge on the part of the plaintiff of this respondent's title.

Respondent further alleges that all those persons, front proprietors on the Mississippi river, residing above and below the front tract of his plantation, called "*White Hall*," at the time he purchased the land now in dispute, and who had or might have had any rights to their double concession, among whom was the present plaintiff, or those under whom he claims, consented to waive their rights to require a pro rata division of the back lands, and also consented that your respondent should purchase the same, including the land now sued for; your respondent, therefore, prays judgment in his favour against plaintiff's claim, and that he be decreed to pay costs; he prays for general relief.

Signed, JAMES PORTER,
Att'y for M. D. Bringier.

Order of February 12*th*, 1838.

NOEL JOURDAN, vs. THOS. BARRETT. } No. 15,277

This cause came on to-day by consent, for trial before the court. Winchester & Taylor, for plaintiff; Preston, Porter, Boyce and Pierce, for defendant; when, after hearing testimony and argument of counsel, the court order that the same be continued till to-morrow morning, at 8 o'clock.

Nos. 15,277 & 15,332.—*Agreement filed February* 12*th*, 1838.

It is agreed by all the parties interested in the above entitled causes, that they may be consolidated and tried together, and that all agreements of counsel for file, all admissions, and all the testimony taken in either case, may be used on the trial, in the same manner as if made, admitted, or taken for each case; this agreement to apply on appeal, as well

as on the trial in the first instance; and it is further agreed by the undersigned counsel, that all the original maps and plats of survey now on file, may be taken up to the supreme court on appeal, instead of copies.

(Signed) BEN. WINCHESTER, *for plaintiff.*
JAMES PORTER, *for M. D. Bringier.*
ISAAC T. PRESTON, *for heirs of Hampton.*

Order of 13*th February*, 1838.

NOEL JOURDAN, vs. THOS. BARRETT.

This cause continued from yesterday, came on again to-day for trial before the court, when, after hearing argument of counsel, the court order that the same be continued.

Order of February 14*th*, 1838.

N. JOURDAN, vs. THS. BARRETT.

This cause continued from yesterday, came on again to-day for trial before the court, when, after hearing argument of counsel, the court [order] that the same be continued till to-morrow.

Order of February 15*th.*

N. JOURDAN, vs. THS. BARRETT.

This cause continued from yesterday, came on again to-day for trial before the court, when, after hearing argument of counsel, the court order that the same be continued till to-morrow morning, at 8 o'clock.

Order of February 16*th.*

N. JOURDAN, vs. T. BARRETT.

This cause continued from yesterday, came on again to-day for trial before the court, when, after hearing argument of counsel, the court order that the same be continued till to-morrow.

Order of February 17*th*, 1838.

N. JOURDAN, vs. T. BARRETT.

This cause continued from yesterday, came on again to-day for trial before the court, when, after hearing argument of counsel, the court order that the same be continued.

Order of February 19*th*, 1838.

N. JOURDAN, vs. THS. BARRETT.

This cause continued from Saturday last, came on again to-day for trial before the court, when, after hearing argument of counsel, the court order that the same be continued till to-morrow.

Order of February 20*th*, 1838.

N. JOURDAN, vs. THS. BARRETT.

This cause continued from yesterday, came on again to-day for trial before the court, when, after hearing [the argument] of counsel, the court order that the same be continued till to-morrow.

Order of February 21*st*, 1838.

N. JOURDAN, vs. T. BARRETT.

This cause came on to-day, (continued from yesterday) for trial before the court, when, after hearing argument of counsel, the court order that the same be continued till to-morrow.

Bills of exceptions filed February 21*st*, 1838.

Be it remembered, that on the trial of this cause, the defendant M. D. Bringier, by his counsel, offered in evidence a copy of interrogatories and answers thereto, hereunto annexed, and making part of this exception, the same being a part of the depositions of certain witnesses taken in the United States district court of Louisiana, in the suit of Wade Hampton vs. Thomas Barrett, and by which, by admission of counsel, were to be considered and taken in the present case, liable to all legal exceptions. The objects of the defendant in introducing such testimony being to establish the fact, that prior to the time when M. D. Bringier had the double concession surveyed by Willson, he notified, or caused to be notified, the front proprietors above and below White Hall, of his intention.

But the court overruled the introduction of such evidence, to which opinion the defendant by his counsel excepts, and prays this bill be signed, &c.

Signed, A. M. BUCHANAN, *Judge.*

Benjamin Bourg, examined.

In answer to the 6th interrogatory, he says: that he don't remember the time the double concession was surveyed, but he knows it was done with the knowledge of the inhabitants, adjacent proprietors at the time, of whom he, the witness, was one of them; and that he was at

that time proprietor of one arpent front by forty in depth, which now belongs to Hudson E. Burr, who bought it at auction after the decease of the wife of the witness, who himself had abandoned all his rights to the double concession in favor of Dovadon Bringier, and that he was present at the measuring the said double concession; and he recollects Batiste Louvriere, his neighbor's, having been employed by the surveyor, and that the said Louvriere has since died.

To the 7th interrogatory, he says: to this he answers, that he don't know.

To the 9th cross interrogatory, he says, he has already answered, that he don't know.

6th. Was not the said double concession surveyed and located in the year 1822; and was it not surveyed and located, with the knowledge and consent of those who where the adjacent proprietors at the time, or some of them? Please state which of them, and all your knowledge on the subject.

7th. Did not D. Bringier, at the time of making said location, delay until the moment the pre-emption law was about expiring, and was it not ascertained that the adjacent proprietors did not intend to avail themselves of the law?

Cross interrogatory.

7th. If you answer affirmatively to the seventh interrogatory in chief, please state how you know it.

Answers.

Paul Melancon being sworn, says:

6th. In answer to the 6th, that he thinks the double concession has been surveyed and located in the year 1822; that he knows the adjacent proprietors had a knowledge of the same, having been notified of the surveying of the double concession by the witness himself, who says he did notify to all the proprietors below the White Hall.

7th. To the 7th interrogatory, he says, that he don't know; and that he the witness, as one of the near neighbors, had no intention of availing himself of the law.

To the 9th cross interrogatory, he says, that he doth not know of any thing more than he has already stated.

Order of February 22d, 1838.

N. JOURDAN, vs. THS. BARRETT. } No. 15,277.

This cause continued from yesterday, came on again to-day for trial before the court, when, after hearing argument of counsel, the court took the same under consideration.

JOSEPH LANDRY, vs. THOMAS BARRETT, } No. 15,332.

Petition filed 6th February, 1838.

To the honorable district court of the first judicial district of the State of Louisiana, in and for the parish of Orleans.

The petition of Joseph Landry, residing in the parish of St. James, and State of Louisiana, respectfully represents:

That on and before the day of he was, and now is, the legal owner and possessor of a certain tract of land, situated and being in the parish of St. James, on the east bank of the river Mississippi, with a front on said river of six arpents more or less, upon the ordinary depths of forty arpents, bounded above by [the lands of] James R. Conway, and below by lands of the succession of Donat Landry.

Your petitioner further represents, that the said tract of land was duly confirmed by the Government of the United States in favor of Silvain Le Blanc under number twenty-six, under whom, by a regular chain of titles, your petitioner holds said land, and that the said tract is represented as section No. twenty, in township number eleven, of range number three east, in the surveys made by authority of the Government of the United States.

Your petitioner further represents, that in virtue of an act, or of various acts of Congress, he was entitled to a preference of any vacant lands adjacent to and back of his said front tract, not exceeding forty arpens in depth; and that in virtue of his said rights, under said act or acts of Congress, your petitioner did, on the day of , 18 , purchase from the United States, and enter a certain tract of land lying adjacent to and back of his said front tract, containing one hundred and fifty-four $\frac{21}{100}$ superficial acres, and designated in the survey made by authority of the United States as section number nineteen, in township number eleven, of range number three east.

Now your petitioner avers, that notwithstanding the premises, by means whereof your petitioner is the absolute owner and legal proprietor of said tract of back land, that Thomas Barrett, residing in the city of New Orleans, has taken possession of a part of said tract of land, pretending to be the owner thereof, which said part contains about thirty-one superficial acres, more or less; and that he has committed, and is now committing, waste thereon, by cutting down the timber growing on the same, to your petitioner's damage five hundred dollars.

Your petitioner further represents, that the said portion of said land so taken possession of by the said Thomas Barrett is worth one thousand five hundred dollars, and that the said Thomas Barrett refuses to deliver the same to your petitioner, and to pay said damages, though often amicably requested so to do.

Wherefore, your petitioner prays, that the said Barrett be cited before this honorable court, within the legal delay, and, after all legal proceed-

ings had, your petitioner may be adjudged and decreed to be the absolute owner of said tract of back land, so purchased as aforesaid by your petitioner, and that the said Barrett may be ordered and decreed to deliver the part of said tract, so illegally taken possession of by him as aforesaid, into the possession of your petitioner; and that he may be condemned to pay to your petitioner the sum of five hundred dollars, amount of damages suffered by your petitioner as aforesaid, together with costs of this suit.

Your petitioner further prays all the relief that justice, equity, and the nature of the case may require.

Signed, BEN. WINCHESTER,
Att'y for petitioner.

Service accepted. Signed January 6th, 1838.
L. PIERCE, *for T. Barrett.*
ISAAC T. PRESTON,
for the heirs of Hampton.
JAMES PORTER,
for M. D. Bringier.

Answer of Thomas Barrett, filed 6th Feb'y, 1838.

To the honorable district court of the first district of the State of Louisiana.

The answer of Thomas Barrett, residing in New Orleans, to the petition of Joseph Landry, filed in this honorable court against him, respectfully shews: that your respondent is the true, lawful, and only owner of the land described in plaintiff's petition; he denies, all and singular, the allegations in plaintiff's petition contained, and avers, in himself, a good title, by purchase from Leroy Pope, on the 18th of March, 1833, by act passed before William Christy, esq., notary public, in and for the parish and city of New Orleans, (a duly certified copy of which is annexed, and *and* which this respondent prays may be taken and considered a part of this answer,) by which act, as may be seen by reference thereto, the said Leroy Pope bound himself to warrant the title to said property, and transferred to this respondent, and expressly subjected him to all his rights, in and to said property, and all the rights of action of warranty which the said Leroy Pope had acquired by his purchase of the said property from Wade Hampton, by act of sale passed before Hugh K. Gordon, esq., late a notary public in and for the said city, on the 8th day of May, 1829, a duly certified copy of which is annexed to the aforesaid answer of this respondent, and which this respondent prays may be taken and considered as part of this answer; by which act, the said Wade Hampton sold the plantation, as therein described, (and of which the property now claimed is part,) to the said Leroy Pope, and justly guaranteed the title thereof, which guarantee being transferred as aforesaid to this respondent, he now calls the said Leroy Pope, residing in Alabama, and the representatives, in Louisiana, of the aforesaid Wade Hampton, since dead, to wit, Mary Hampton, his widow in community, also Caroline M. Preston,

wife of Jno. S. Preston, one of the heirs of the said deceased, and Suzann F. Hampton, also one of the heirs of the said deceased, and John S. Preston, husband of the aforesaid Caroline M. Preston, all living and residing in South Carolina, to warrant and defend him against the plaintiff's claim; and prays that a citation may issue to their agents in this State, or, in case they have none, that this honorable court may appoint an attorney to represent them; and this respondent, reserving all the rights of action which may accrue to him in case of eviction against his said warrantors, prays for general relief, &c.

And as in duty bound, &c.

Signed, LEVI PIERCE.

Answer of the heirs of Wade Hampton.

To the honorable district court of the first district of the State of Louisiana, in and for the parish of Orleans.

The answer of Mary Hampton, widow of the late General Wade Hampton; also of Caroline M. Preston, wife of Jno. S. Preston, and by him duly authorized; also of Suzann F. Hampton. The said Mary, Caroline M., and Suzann F. Hampton, representing, by inheritance from General Wade Hampton, and by purchase from his only other heir Col. Wade Hampton, his estate in Louisiana, (to the call in warranty of Thos. Barrett upon them, in the suit of Joseph Landry against him, filed in this honorable court,) respectfully shews: that your respondents deny their liability to warrant Leroy Pope, his heirs and assigns, or the said Thomas Barrett, against the claim of plaintiff, to any part of five hundred and ten acres of land, composing the second depth or back part of the plantation called White Hall, sold by the said Wade Hampton to Leroy Pope, by act passed before Hugh K. Gordon, esq., notary public of the city of New Orleans, on the 8th day of April, 1829, and recorded in the parish of St. James, on the 16th day of the said month, because they allege that the said Thomas Barrett, and the said Leroy Pope, respectively, when they purchased said tract of land, had a perfect knowledge that the late Wade Hampton derived his title to the said tract of land from the United States, through Michael D. Bringier, esq., as the second depth to his White Hall plantation, by pre-emption.

Your respondents claimed the said five hundred and ten acres of land, of which the land now sued for makes a part, by virtue of a legal sale made by the United States to Michael D. Bringier, in the year 1822, in pursuance of the fifth section of an act of Congress, passed the 3d day of March, 1811, entitled "An act providing for the final adjustment of claims to lands, and for the sale of public lands in the territories [of] Orleans and Louisiana, and to repeal the act passed for the same purpose, approved February 15th, 1811, and revived by the 7th section of an act of Congress, entitled "An act supplementary to the several acts for the adjustment of land claims in the State of Louisiana, approved the 11th day of May, 1820; under which acts of Congress, your respondents do, and their ancestors did, claim and sell the said five hundred and ten acres of land, which they allege were surveyed and delivered to the said

Michael Bringier by John Wilson, the principal deputy surveyor general of the United States for this district, on the 17th day of December, 1822. They allege that the said land was afterwards surveyed and delivered to the said Michael D. Bringier by A. T. Righter, on the 10th day of June, 1830, who was then the principal deputy surveyor of the United States for the State of Louisiana, which survey he was duly authorized by law to make, sign, and approve. They further allege, that said survey was duly approved by the surveyor general of public lands south of Tennessee, on the 9th day of March, 1832. And your respondents plead the prescription of five years against any proceedings to annul the sale and delivery of said land to Michael D. Bringier through error.

Your respondents deny that the plaintiff has any legal claim or title to any part of the said five hundred and ten acres of land, and specially denies that he acquired title to the land sued for, by virtue of the laws mentioned in his petition.

They further plead against the suit and claim of the plaintiff, the right of prescription of ten years, founded upon uninterrupted possession, in good faith, and by virtue of a just title in their ancestor, his vendor, and subsequent vendors, before the institution of this suit.

Wherefore your respondents pray judgment in their favor against the demand of the plaintiff, and also against the call in warranty made upon them, and for costs.

They further allege, that Michael D. Bringier, of the parish of Ascension, sold the plantation, called the White Hall, to the late Wade Hampton, by act of sale passed before Hugh K. Gordon, esq., late a notary public of New Orleans, on the 9th day of February, 1825, and duly recorded in the office of the parish judge of this parish. By the said act of sale, the said Michael D. Bringier bound himself to warrant and defend the title to the said plantation, including the above mentioned five hundred and ten acres of land, to the said Wade Hampton, his heirs and assigns, against any claims of all persons whatsoever, which appears by the act of sale, which your respondents pray may be considered as part of this answer, and is liable, by virtue of said warranty, to pay to your respondents all the damages they may suffer in case Thomas Barrett is evicted in this suit.

Wherefore, your respondents respectfully pray, that Michael D. Bringier, esq., may be cited in warranty to appear and defend this suit, and that whatever judgment may be rendered in their favor against them, that such judgment may be rendered in their favor against said Bringier, as will entirely indemnify them for all the damages they may suffer, and which he is liable to pay to them under his warranty aforesaid.

And your respondents pray for all such other and further relief as justice, equity, and the nature of their case may require.

As in duty bound, &c.

(Signed) ISAAC T. PRESTON,
Attorney for defendants in warranty.

Answer of M. D. Bringier in warranty.

To the honorable district court of the first judicial district of the State of Louisiana, in and for the parish of Orleans.

The answer of Michael D. Bringier, of the parish of Ascension, in answer to the petition of Joseph Landry, filed against Thomas Barrett, and also in answer to the call in warranty made upon this respondent in the same suit by Mary Hampton, widow of the late Wade Hampton, also of Caroline M. Preston, wife of John S. Preston, and by him duly authorized, and Suzan F. Hampton, respectfully shews: that he comes into court by the undersigned, his counsel, and reserving to himself the benefit of all exceptions, says, he denies all the facts and allegations therein contained, except what may be hereinafter specially and expressly admitted.

And for further answer says, that he makes the same defence to this action which has been made by the heirs of Hampton in their answer. That your respondent claims the land now sued for, as owner and proprietor of the same, by virtue of a sale made to him from the United States, by and through their regular and duly constituted officers, empowered to sell the same, that is to say, he bought the said land, and paid the receiver of public moneys for the same, on the 13th of April, 1822, and the said land was afterwards surveyed by the principal deputy surveyor of the U. States and delivered to him, said respondent, and said surveyor was afterwards approved of by the proper officers of the United States.

He further alleges, that he, and those claiming under him, have been in actual, peaceable, and uninterrupted possession ever since the date of said survey down to the present time, and he opposes to the claim of the plaintiffs the prescription of ten years, founded on the just title above set forth, and the possession as alleged.

He further says, that if the plaintiff should recover in the present suit, yet the heirs of Hampton have no legal grounds of action against this respondent, nor is he responsible to them in warranty; that the said Hampton bought the said land with a perfect knowledge of respondent's titles, which were exhibited to him on the day of sale and previous to signing the same, with which the said Hampton was then and there perfectly satisfied.

Your respondent further alleges, that he has sustained damages, by this vexatory suit, to the amount of five thousand dollars, and which he pleads in reconvention, and prays judgment for the same. He also alleges the value of the improvements made on said land to be five thousand dollars, which he also pleads in reconvention, and for which he also prays judgment.

He further states, that if any titles should be produced by the plaintiff from the United States, or from any person or persons whatever, the same are fraudulent and void, and were obtained with a knowledge, on the part of the plaintiff, of this respondent's title.

Respondent further alleges, that all those persons, front proprietors on

the Mississippi river, residing above and below the front tract of his plantation, called White Hall, at the time he purchased the land now in dispute, and who had, or might have had, any rights to their double concession, among whom was the present plaintiff, or those under whom he claims, consented to wave their rights to require a pro rata division of the back lands, and also consented that your respondent should purchase the same, including the portion of land now sued for.

Your respondent therefore prays judgment in his favor against plaintiff's claim, and that he be decreed to pay costs.

He prays for general relief.

(Signed) JAMES PORTER,
for M. D. Bringier.

Agreement of counsel, filed 12*th February*, 1838.

It is admitted in this case, that the plaintiffs and defendants did always hold, and still do hold, by good titles, translative of property, the front tract or tracts described in the pleadings, from the confirmees down.

(Signed) BEN. WINCHESTER,
Attorney for plaintiff.
I. T. PRESTON, *for warrantees.*
JAMES PORTER,
[*for*] *M. D. Bringier.*

Testimony, filed 12*th Feb'y*, 1838.

LANDRY
vs.
BARRETT.

It is admitted, that the plaintiff and defendant respectively hold their front tracts by a regular chain of titles from the confirmee.

Plaintiff offers certificate of confirmation of the register of the land office, filed and marked A.

Plaintiff offers the receipt of the receiver of public moneys, filed and marked B.

Plaintiff offers a certified copy of M. Bringier's application to the land office, No. 101, filed and marked D.

Plaintiff offers the agreement of parties respecting introduction of evidence, filed and marked E.

Plaintiff offers the deposition of Col. Williams, surveyor general, and the plat of survey annexed to the same, filed and marked F.

Plaintiff offers a plat of survey from the land office, shewing the entries, filed and marked C.

Plaintiff offered a certified copy of instructions from the General Land Office to the surveyor general of Louisiana, filed and marked H.

Plaintiff offers certificate of confirmation, Jourdan's tracts, filed and marked I.

Plaintiff offers receipt for the back tract of Jourdan's estate, now filed and marked J.

Defendant offers in evidence a sale from Hampton to L. Pope, now filed and marked K; also the sale from Pope to Barrett, now filed and marked L.

Defendant offered in evidence the receipt of receiver of public moneys to Bringier, now filed and marked M.

Defendant offered in evidence the documents annexed to Colonel William's testimony, marked B, C, D. It is admitted that the front tracts of plaintiffs, as well as of defendants, have been regularly confirmed by the land officers under the laws of the United States, by act of Congress.

Defendant offered in evidence the depositions of Abraham M. Righter, now filed and marked N.

Defendant offered in evidence the sale of a plantation and plan thereof from Bringier to Hampton, dated 9th February, 1825, now filed and marked O.

Louis Bringier, witness for defendant, sworn, says that he was parish surveyor of the parish of St. James from about 1816 to 1824; says that he was shewn the lines run by Wilson on the plat of survey marked B, on file among documents marked F; that he was told by the front proprietor of lands below White Hall, that the line run by Wilson, and which they shewed him, was Bringier's line; that he knows M. D. Bringier claimed the land embraced within the lines as run by Wilson.

Witness says that he was employed by the front proprietors, already mentioned, to run out their lines, and that he did so, running out their front tracts, and continuing them in the rear, until he arrived at the line which, as already stated, they told him was Bringier's line, as established by Wilson.

That amongst those front proprietors, who employed witness to run out their lines as aforesaid, was Joseph Thomlet, Etienne Melancon, Abraham Arcenaux, Baptiste Chisapron, and he believes nearly all those living at that time below White Hall; that the tracts of those persons who lived below those just mentioned, he believes did not touch with the lines of their back tracts the lines of Bringier as run by Wilson.

Jno. Thibaut, witness for defendant, sworn, says, he was in the employment of M. D. Bringier in the years 1822, '23, and '24; witness recollects of Bringier being in possession of the land of White Hall; he thinks the lines of the double concession were run at the latter end of 1822, or beginning of 1823; he used the land of the back of the concession for the purpose of getting pickets and other timber.

Witness never heard of any difficulties with the neighbours on account of running the lines at the time; none of the neighbours at that time claimed the possession of the back land to witness's knowledge.

Cross-examined.

Witness says that the back concession, back of the forty acres, had no fences or improvements, and was entirely uncultivated; there were no ditches or fences in 1822; some of the main drains ran over the forty

arpens; there was a road cut for a canal, sixty acres deep, in 1823; part of the canal was begun about that time a little beyond the forty acres; the road began about the centre of the plantation on the back land, and ran straight back to about sixty acres from the river.

François Huguet, witness for defendant, sworn, says that he has resided within the neighborhood of White Hall from the year 1817, up to the present time; witness has often seen the lines established by the surveyor on the back tract of Whitehall in 1822; he did not see the lines run. Bringier has been in possession of the land embraced in those lines since 1822, up to the time he sold. After Bringier sold, Mr. Hampton had possession of that land, the double concession included; after Hampton, Pope had possession of it; and after Pope sold it, Mr. Bell was in possession of it.

Cross-examined.

Witness thinks that the clearing was carried beyond the forty arpens depth; he does not know where the forty arpens ceased. Witness means by being in possession of the land, that the land belonged to Bringier.

Witness says, that Jourdan's, one of the plaintiffs, is the first tract fronting the river ascending, after leaving Chisapon; after him, Joseph Herbert is the next; and the next to Herbert is Rosamond Brow.

Re-examined.

It is to witness's knowledge, that Bringier has opened a road on the double concession, and has also carried the drains or ditches to a certain distance on the same; he has also cut wood on it about the years 1822 and 1823.

Cross-examined.

The double concession is not cultivated nor fenced in.

Re-examined.

Witness was living at that time at A. Arsenaud. Mr. A. Arsenaud never told witness that he recognized the line, drawn in 1822, was the line of Bringier.

Document A.

No. 26.—Land Office, *Eastern district of Louisiana:*

Silvain Le Blanc claims a tract of land situate on the east side of the river Mississippi, in the county of Acadia, containing six arpens and twelve toises in front, and forty arpens in depth, and bounded on the upper side by land of Estevan Penoit, and on the lower by land of Pedro Lanone.

This land was regularly surveyed in the year 1782 for Joseph Dupuis, under whose title the claimant holds, and it having been continually inhabited and cultivated for more than ten consecutive years prior to the 20th December, 1803.

Confirmed.

REGISTER'S OFFICE, *New Orleans.*

I, B. Z. Canonge, register of the land office at New Orleans, do hereby certify the foregoing to be a true copy of the decision "of the late board of commissioners for the eastern district of the late territory of Orleans, on the claim of Silvain Le Blanc, No. 26," as taken from the "decisions on land claims," of said board on record in this office.

In faith whereof, I hereunto subscribe my name, this 7th day of February, 1838.

(Signed) B. Z. CANONGE, *Reg'r.*

Original B.

No. 520. RECEIVER'S OFFICE, So. EAST. DIST., LA.,
New Orleans, 8th March, 1836.

Received from Joseph Landry, of the parish of St. James, the sum of one hundred and ninety-two $\frac{76}{100}$ dollars, being in full of the purchase money of his pre-emption rights, by virtue of an act of Congress, authorizing the inhabitants of Louisiana to enter their back lands, approved 15th June, 1832, to a tract of land adjacent to a back of his front tract, situate in township No. 11, range 3 east, and containing one hundred and fifty-four $\frac{21}{100}$ superficial acres, at one dollar and twenty-five cents, as per register's certificate, numbered 520, and being described as section No. 19.

(Signed,) MAURICE CANNON,
Receiver of public moneys.

Recorded in the parish judge's office, at the parish of St. James, this 11th day of September, 1837.

(Signed,) L. M. TANEY, *Judge.*

C.—*Evidence of S. H. Harper.*

To the first interrogatory of the plaintiff, this deponent, Samuel H. Harper says, that he was the register of the land office of the United States for the eastern district of Louisiana, at New Orleans, during the year 1822.

To the 2d interrogatory of plaintiff deponent says, that in the year 1822 there was no regular plat of surveys of the United States of that district or portion of country alluded to in this interrogatory returned to his office.

To the 3d interrogatory of plaintiff deponent says, that there were no plats of survey to his knowledge, executed under the authority of the United States, shewing the quantity of back lands which each of the front proprietors in the eastern district would have been entitled to purchase by preference, in virtue of the acts of Congress then in force.

To the fourth interrogatory of the plaintiff deponent says, that owing to the fact of the back lands or double concession not having been regularly surveyed and returned to his office *as* as the time limited by law for entering those back lands, was about expiring before surveys could be executed, and being anxious that the front proprietors should

have the benefit of the law passed in their favor, this deponent devised a form of application to be made by the front proprietors for the back ands, which form, for the sake of convenience and to preserve uniformity in all such entries, he caused to be printed, leaving blanks to be filled with the names of the purchasers, the quantity of land claimed, &c.

This form of application was made in pursuance of the conditions and restrictions contained in the fifth section of the act of Congress of the 3d March, 1811, which had been revived by the act of the 11th May, 1820. The law thus revived inhibited proprietors from purchasing back lands which should extend more than forty arpens in depth, nor contain a greater quantity of land than that contained in the front tract, nor were they allowed to take in lands which bordered on "another river, creek, bayou, or water course." Their inhibitions were stated in the form of application, which application was drawn up in the first person singular or plural, as the case was, and signed by the party applying, so as to make the whole his own proper act, and thus to take the risk of paying for more land than might ultimately be allotted to him. This deponent further states, that it was his constant practice to explain to purchasers that he had no means of determining the quantity of land to which each was entitled. That each one must judge for himself. That if he paid for more land than was contained in his front tract, or for more than upon a division with his neighbors, as presented by law, in case there should not be enough for all, although the Goverment might afterwards refund the money, yet it would be attended with trouble and expense. This explanation deponent thought was due to the applicant, and due also to the United States, lest it might be thought that they had through their agent imposed upon the purchasers; but by the course adopted, it left the applicant at liberty to forego the privilege, which the act of 1811 gave him, or to incur the risk of paying for more land than might fall to his share, when the survey should be made.

This deponent has no recollection of selling a back tract to M. D. Bringier in particular, but if he purchased one, it must have been in the form, and with the explanations just stated, for deponent does not believe that he sold any double concession in any other form than the one indicated, and if he did not, in every case, make the explanations mentioned, the form of the application itself indicated the conditions on which the land was sold, except perhaps that part which relates to the division of back lands between conflicting claimants, but that is a part of the *land* itself under which the lands were sold.

To the 5th interrogatory of the plaintiff deponent answers, that whenever an applicant decided that he was entitled to a certain quantity of land in the rear, alleging that it was no more than the quantity contained in his front tract, it was the practice to certify that quantity to the receiver, who thereupon received the purchase money for it. As to the risk the purchaser incurred, that has been already stated.

To the first cross interrogatory of the defendant deponent answers, that among the great number of purchasers of back lands, he has no recollection of selling any land to M. D. Bringier in particular, and conse-

quently knows nothing of the quantity of land purchased by him, alluded to in the interrogatory. Nor does he recollect of any survey of it made by J. Wilson being exhibited to him. Such a survey, if exhibited, would not have been a safe guide to follow, inasmuch as, at that time, there was no connected map made of the lands in the district. If Mr. Bringier purchased the land mentioned in the interrogatory, deponent undoubtedly thought he was authorized to sell it to him, by the laws of the United States, under the conditions stated under the examination in chief.

To the 2d cross interrogatory deponent answers as he has already answered, that there was no township maps returned to his office in the year 1822. Deponent has an indistinct recollection of corresponding either with the Secretary of the Treasury, or with the Commissioner of the General Land Office, on the difficulty which might arise to purchasers in consequence of the back lands not having been surveyed. If such correspondence took place, it will be found in the land office at New Orleans, if the frequent changes in that office since have not occasioned its loss, or else in the General Land Office, or in that of the Secretary of the Treasury. But whether instructed or not in this matter, deponent thinks the terms of the 5th section of the act of 1811, which was revived in the 5th section, makes it the duty of the *applicant* to deliver to the register of the proper land office, a notice in writing, *stating the situation and extent* of the tract of land he wishes to purchase, &c.; which enactment, it seems to this deponent, put the risk of claiming too much or too little on the front proprietors, and therefore concluded that the back lands could be sold, and the 5th section of the act of 1811 could be carried into full effect in the absence of township maps, by the plan adopted as before stated.

To the 3d cross interrogatory deponent says, he never required, nor did he deem it his duty to require, applicants to enter, under the law, the full quantity contained in their front tracts; they were left at liberty to decide that matter for themselves, under the explanations given, as stated in the examination in chief; deponent's memory is not sufficiently tenacious to recite, after a period of fourteen years, his conversations with individuals on this subject, but he feels morally certain that if he advised at all, it was to claim less, rather than *more* land than was supposed to be contained in the front tracts.

To the 4th cross interrogatory of defendants, deponent answers, that under the 5th section of the act of 3d March, 1811, he did not think the converging or diverging of lines was a matter of any importance, the *depth* and the *quantity* of land was the object of that law, without regard to the course lines, and therefore the applicant was only required to state the quantity of land, and if that did not exceed the number of arpens contained in his front tract, or extend more than fifty arpens in depth, or include lands on another river, bayou, or water-course, the entry was considered legal; subject, however, to a division with the co-front proprietors, as the law required.

To the 5th cross interrogatory deponent answers, that he does not re-

collect whether much or any publicity was given to the acts of 1820, authorizing the entry of back lands, other than the usual publication of the acts of that session of Congress; yet he thinks it probable that he might have called the attention of the owners of land, in his district, to that law, through the newspapers, as he felt a solicitude that they should not be disturbed in the rear by speculators; deponent knows of no other intimation being given to front proprietors, that if they did not avail themselves of their right, that they might lose it under subsequent laws than the danger mentioned in act itself, which declared that if they did not avail themselves of the right given by the law within, their rights of pre-emption should cease, and the land be subject to be purchased by others.

The words "through the newspapers."

Deponent adds, that since writing the foregoing deposition, he came to New Orleans, but could not obtain access to the land office there, wishing to *see* the precise form of application for back lands, but he believes that he has stated the substance of it substantially.

Signed, SAMUEL H. HARPER.

Sworn to and subscribed before me, at New Orleans, this 6th October, 1838.

Signed, J. BERMUDEZ,
Judge of the court of probates.

No. 101—A.

Land office, eastern district of Louisiana.

To the register of the land office for the eastern district of Louisiana, at New Orleans.

SIR: In virtue of an act of Congress, dated 11th May, 1826, I apply to become the purchaser of a tract of land, adjacent to and back of a front tract already owned by me, which said front tract contains twenty-seven arpens 13 toises and 2 feet front, and forty arpens in depth, bounded as follows, viz., front on the left bank of the Mississippi, on the upper side, by land of Baptiste Loviere, and below, by lands of Paul Le Blanc. This land, composed of four tracts, confirmed in the name of Alexis Cesar Bonremy, and in the name of James Melançon. Two arpens, on the lower side, have been sold. The said back land, now claimed by right of pre-emption, extends in depth,
arpens, beginning at the rear of the said front tract, and contains five hundred and ten superficial acres, not being a greater quantity than is contained in my front tract, and does not extend so far back as to include any land fit for cultivation, bordering on any river, creek, bayou, or water-course.

(Signed) ML. DORADON BRINGIER.

New Orleans, April 12th, 1822.

I certify, that from the records in my office, expressing the quantity of land contained in the applicant's front tract, (the surveys in this dis-

trict not having been executed,) and in virtue of the laws in this case made and provided, it appears the said applicant is entitled to the quantity of land for which he has applied, viz., five hundred and ten superficial acres, on paying the price of one dollar and twenty-five cents per acre.

(Signed) SAMUEL H. HARPER, *register.*

Register's Office, New Orleans.

I, B. Z. Canonge, register of the land office at New Orleans, do hereby certify the foregoing to be a true copy of the certificate of the late register of said office, on the application of M. Doradon Bringier, No. 101, as taken from the application on land claims, on file in this office.

In faith whereof, I hereunto subscribe my name, this 6th day of February, 1838.

(Signed) P. Z. CANONGE, *Register.*

Document E, the agreement of counsel, introduced in this case, will be found filed in the foregoing, on the 1st Feb'y, 1838, page 10 of this record.

Evidence of C. C. Williams.

Answer to plaintiff's 1st interrogatory. I am.
" " 2d " I did.
" " 3d " There was not a sufficient quantity of lands, within the limits of forty arpens from the back lines, and in the rear of sections 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 53, 54, 55, 56, 31, 32, 33, 34, 35, 36, and 37, of township No. 11, range 3 east, (as numbered on the township map approved by me) to give to each front proprietor an area in the rear equal to the area of the front tract.

Answer to plaintiff's 4th interrogatory. According to my conceptions of my duty under the act of Congress of the 15th June, 1832, entitled " an act to authorize the inhabitants of the State of Louisiana to enter the back lands," I caused the land in the rear of the above mentioned sections to be divided amongst the front proprietors, equitably, and in conformity with said act.

Answer to 5th interrogatory. The paper, marked A, hereunto annexed, is a copy of the township map, approved by me, showing the several divisions of the back land, and the area of each division.

Answer to plaintiff's 6th interrogatory. There is on the files of my office, an unapproved plat of a survey of the back land, of which the paper marked B is a copy, and also a township map, approved by G. Fitz, surveyor of public lands south of Tennessee, of which the paper marked C is a copy; but I have not been able to find any approved separate plats of the back lands corresponding with the township map last referred to.

Answer to plaintiff's 7th interrogatory. The plat marked B differs from the survey represented on the map marked C, the side lines diverging several degrees more towards the rear, and including lands nearer to the back lines of the other front tracts. On the sketch marked

D, the red lines represent the survey of Wilson; the green shaded lines, the one made by Foster & Walker; and the black lines, the surveys approved by me, and the areas on the margin show about the amount in confliction between Wilson's survey and that approved by me.

Answers to interrogatories propounded on behalf of Gen'l Wade Hampton's representatives.

Answer to 1st interrogatory. I believe that J. Wilson was, in the year 1822, principal deputy surveyor of the United States, for the south-eastern district of Louisiana, and that he made the survey in the month of December of that year, and that the paper marked "C," is a copy of the plat made by him, from which it appears that the tract surveyed by him contained five hundred and ten superficial acres, and did not exceed forty arpens in depth from the back line of the front tract; but I do not know what portion of the front land was the property of Mr. Bringier.

Answer to second interrogatory. I do not believe the survey made by Wilson was returned to the office of the surveyor of the south of Tennessee, or that it was approved by him; nor have I seen any approved map representing the survey made by Wilson. The surveys, according to the township map that was approved, having been made by Foster and Walker, and differing materially from that made by Wilson.

Answer to 3d interrogatory. I do not believe Wilson's survey was returned to either office, but I believe Foster and Walker's was.

Answer to 4th interrogatory. My only authority to locate the back tracts referred to, is derived from the act of Congress above referred to.

Answer to 5th interrogatory. I found by the township map that there are a few surveys, made by different deputy surveyors, that show inequality in the distribution of the back lands; but when the parties aggrieved have required it, and the difference was important, and the separate plats had not been finally approved, the surveys have been changed.

Answer to 6th interrogatory. I do not now remember the names of all who have applied for the change of the surveys in question, but I remember that Mr. Jourdan, Mr. Melancon, and Mr. Burst and others, applied repeatedly; I have no recollection that Mr. Bell ever made any such application, but I do remember that he made a figure representing the shape of the front and back tracts, and asked my opinion as to the legality of such a survey; this occurred on board of a steamboat, in March or April of 1834; I think, too, he inquired afterwards, whether the survey was approved that was made by Lyons, and requested a copy of the plat.

Answer to cross interrogatories propounded on the part of M. D. Bringier.

Answer to 1st interrogatory. The accounts of the deputies are forwarded to the General Land Office after they are paid, but the accounts of the surveyor general are not credited by the disbursement until the

township maps exhibiting the surveys paid for have been forwarded to the same office.

Answer to 2d interrogatory. I do not know. I have examined, but I have not been able to find any account for the work, but presume it must have been paid for.

Answer to 3d interrogatory. I believe J. Fitz was surveyor south of Tennessee, in the year 1832, but the law creating the office of surveyor of the public lands for the State of Louisiana appears to have been approved on the 3d March, 1831, by which the officers of principal deputies were abolished after the first May then next following, and to whom the surveyor south of Tennessee was required to deliver the books, papers, records, and documents relating to the public lands and private claims in Louisiana; I do not think, therefore, that his approval or disapproval of plats in 1832 would be final.

Answer to 4th interrogatory. The approval of the township map is not deemed conclusive, because separate plats are required by law, which should also be approved, to which patent certificate and patent refer.

Answer to 5th interrogatory. The surveyor general is authorized to divide the vacant lands between the claimants, in such manner as to him may appear most equitable; his discretion, therefore, is limited to what appears to him most equitable.

Answer to 6th interrogatory. The lines do not diverge towards the rear, but the lower side line of the back tract does depent from the direction of the lower side line of the front, so as to give to the tract its due proportion of the land falling within the scope of eighty arpens from the river.

Signed, H. J. WILLIAMS.

H.

Instructions from the Secretary of the Treasury and the Commissioner of the General Land Office to the surveyor general of Louisiana, on the claims of M. D. Bringier, upon the double concession to the White Hall tract.

General Land Office, May 20th, 1836.

SIR: I have the honor to submit for your decision the question of Mr. Dovadon Bringier's rights to be confirmed in the possession of certain back land, in the form and to the extent of the survey of the lines of which he claims.

The 7th section of the act passed on the 11th May, 1820, entitled "an act supplementary to the several acts for the adjustment of land claims in the State of Louisiana," having revived the 5th section of the act of the 3d March, 1811, providing for the final adjustment of claims to lands in the Territory of Orleans and Louisiana, and Mr. Bringier, under the date of the 18th of April, 1822, describing his lands fronting on the river Mississippi, and his boundaries above and below, to the depth of forty arpens, applies to the register at New Orleans to become the purchaser of a tract adjacent to and back of his said front, stating

that the back land, so claimed by right of pre-emption, extends in depth, arpens, beginning at the rear of said front tract, and contains five hundred and ten superficial acres, not being a greater quantity than is contained in his front tract, &c.

On the 17th of May following, S. H. Harper, register, certified to the principal deputy surveyor of the S. E. district of Louisiana, that from the record in my (the register's office) expressing the quantity of land contained in the applicant's front tract, (the surveys in this district not having been executed) and in virtue of the laws in this case made and provided, it appears the said applicant is entitled to the quantity of land for which he has applied, viz., five hundred and ten superficial arpens, on paying the price of one dollar and twenty-five cents per acre, which he paid.

It appears, from a certificate of J. B. Wilson, subscribing himself P. D. surveyor, with a plat annexed, dated Dec'r 17th, 1822, that at the request of Mr. M. D. Bringier, he surveyed a tract of land claimed by Bringier, a pre-emption right, pursuant to the 5th section of the act of the 2d of March, 1811, above mentioned, revived as aforesaid on the 11th of May, 1830, containing five hundred and ten acres and hundredths of an acre. The land contained in this survey is the subject of this submission.

The 5th section of the act of the 3d March, 1811, revived in 1820. Provided "that every person, &c., who owns a tract of land bordering on any river, creek, bayou, or water-course, in the said territory, and not exceeding in depth forty arpens French measure, shall be entitled to a preference in becoming the purchaser of any vacant tract of land, adjacent to and back of his own tract, not exceeding forty arpens French measure in depth, nor in quantity of land that which is contained in his own tract, at the same price, and the same terms and conditions, as are or may be provided by law for the other public lands in the said territory."

The said section provides "that the principal deputy surveyor of each district, respectively, shall be and he is hereby authorized, under the superintendence of the surveyor of the public lands south of Tennessee, to cause to be surveyed the tracts claimed by virtue of this section, and in all cases where, by reason of bends in the river, &c., bordering on the tract, and on adjacent claims of a similar nature, each claimant cannot obtain a tract equal in quantity to the adjacent tract already owned by him, to divide the vacant lands applicable to that object between the several claimants in such manner as to him may appear most equitable.

The ancient division lines were run nearly perpendicular to the river, whereby the side lines diverge in the inward bends, and converge in the outward as in the present instance. It is only to the latter that the last clause quoted from the law can be applicable—where meeting lines curtailed, a river concession and larger area in front was allowed by the old regulation in compensation.

On the part of Mr. Bringier it is asserted, and a number of persons have been brought to prove, that he apprized several of his neighbors of

their rights of preference in the purchase of vacant land in the rear of their possession, of which they did not choose to take advantage, but expressed their willingness that he should extend his survey over what they might have claimed, or at least over a part of the same; and it appears he deferred his application to a late period. The legality of the survey by which Mr. Bringier claims to hold his purchase in 1822 is now contested by sundry persons—some of whom were front proprietors at that day, and some are said to hold under to those who consented to the course taken by Mr. Bringier on that occasion; and it is urged that Mr. Bringier had no right to have his lines extended in such manner as to deprive the front proprietors of the benefits of act to authorize the inhabitants of the State of Louisiana to enter the back lands, passed June 15th, 1832.

In behalf of Mr. Bringier, it is argued that his pre-emption survey extends no further back than forty arpens, and contains no more than his possession fronting on the river.

That he had been twelve years in quiet possession, amounting to prescription, when a resurvey was called for by those who contested his rights.

That the act of public agents, even under mistake, when within the scope of their authority, is binding upon their successors, and upon the Government.

That the purchase was no surprise practised upon the neighbours, but made in good faith.

That Mr. Bringier sold the tracts in question, and the front tracts to which it is attached, with warranty, and the same has been sold by his purchaser for a less sum, which the warrantee must make good in case of eviction.

That the present holders refuse to pay interest on the purchase-money on pretence that the title cannot be made perfect, and besides the ruin of Mr. Bringier's fortune.

That to dispossess him would unsettle the titles in Louisiana to a great extent, impair the confidence in the stability of tenures, and in the acts of Government by its officers, and produce great and extensive mischief.

Several communications may be found among the papers remonstrating against the form and extent of Wilson's survey, and claiming a resurvey, in order that other front proprietors may obtain the privilege of purchasing in proportion to their possessions bordering on the river. The substance of the arguments produced against Bringier's pretensions is set forth at large in the report and letters of the surveyor general herewith transmitted. The exposition of facts and reasons on which he founds his opinion is so concisely, and at the same time so clearly, expressed in these communications, that to state them here would be but to make a new copy of what I presume you, sir, will wish to inspect; and I therefore very respectfully take the liberty of referring you to them, observing that I concur in most of his observations.

In regard to Wilson's survey, which appears to have been made in

pursuance of Mr. Bringier's views of his privilege, more than with regard to the law and his instructions, it may be observed that he was paid for executing it, the law allowing no fees to the principal deputy surveyor; and as it was not approved by the surveyor south of Tennessee, nor appears even to have been submitted for his approval, it would be defective in point of authenticity, even if it had pursued the directions of the statute, and the directions by which the Secretary of the Treasury had directed the back concessions to be surveyed.

The surveyor general alludes to the sanction, by the surveyor south of Tennessee, of a survey made in 1830. A particular plat of survey, with the approval, is before me; but being led to believe it confirms in principals to the lines run by Wilson, I am inclined to concur with him in the belief of its illegality.

The directions of Mr. Gallatin to continue the side lines of the front tract in the new survey is agreeable to ancient Spanish custom, in what was called the double concessions, and to me seems agreeable to the plain dictates of common sense. In the situation where the river curves inward, the back land being abundant, the depth only would be diminished by the diverging of the side lines, and no difficulty could occur. It was only in the outward curvations of the river, where the form of the old surveys rendered the concession of back tracts equal in quantity to those in front, impossible that the P. D. surveyor, under the superintendance of the surveyor south of Tennessee, was allowed to divide the back lands adjacent, and comprehended in this provision, in such manner as to him should appear equitable.

I cannot conceive that the law vested the surveyor with an arbitrary and unlimited discretion. The terms of the laws, and the necessity of the case, forbade him to lay off to any one proprietor a tract in the rear equal to that he owned bordering on the river. It was this very circumstance of a deficiency of back land, within the scope of forty arpens deep in such situation, rendering it impossible that each front proprietor could obtain a quantity equal to his old possession, that professedly caused the propesion for the equitable division referred to, and to assign to Mr. Bringier the full amount he pretend[ed] to, was to act adversely to what I conceive to be the letter and spirit of the law, and to the explicit instruction of the Secretary of the Treasury.

The pretensions of Bringier, I think, derive no support from the consent of his neighbours; supposing, for argument, that consent to have been given, the waiver of the privilege offered to these, cannot operate as a legal assignment of the public property to a more clear sighted speculator, who could foresee the growing value of lands so situated.

The privilege was intended for the advantage of the particular proprietors who might have claimed it, and its not being accepted by some could not enlarge the acquisition of another. The land belonged to the United States, who offered a preference to certain persons in the purchase, but no power to make over to another a benefit which they might decline; in which case the land remained a part of the public domain, to be retained or disposed of according to the wisdom of Congress. I

ask leave to draw your attention to a clause of the act, which I consider decisive in favour of the position I attempt to maintain. It is quoted by one of Mr. Bringier's advocates in these words: "if any person having the right of pre-emption shall fail to deliver notice of their wish to purchase during the time the law was in force, or to pay for the land, the right of pre-emption shall cease and become void, and the lands may hereafter be purchased by any person in the same manner, and on the same terms, as are or may be provided by law for the sale of public lands." This condition is thought to derive additional force from the argument of the surveyor general, that the adoption of the principle assumed in the survey would leave slips, remnants, rendered worth little or nothing to the United States by the operation. After having expressed an opinion as to the extent of the privileges allowed by the statute, it would be useless to expatiate on the legal import of the words "claimant" therein expressed. The law presents no term within which the survey should be executed, approved, and returned. Mr. Bringier, when he applied to purchase, deposited the sum sufficient to cover all the land he claimed. I do not know that the payment of any part of this sum could be refused on account of any supposed excess in the estimate, especially as there was no survey to govern the land officers.

It is needless to discuss the doctrine how far the U. States are bound by what their agents have done, even in mistake, when acting within the scope of their authority. The application made of the principle in this case is a petitio principii, since the fact is denied, and not demonstrated. Equally unprofitable would it be to examine whether eviction forms a part of the premises, would work a hardship to Bringier, or to those who hold under him. If the latter have bought only a quit claim of Bringier, they have bought under the full force of the rule—caveat emptor.

If he have guaranteed the title without the sanction of law, the United States are in no manner bound to save him from the consequences of his own imprudence, and make good his warranty. Besides, the indulgence of feelings in opposition to my judgment can scarcely be allowed me.

It is zealously argued by the advocates of Mr. Bringier's claim that the Louisiana statute of limitations is run against all other claimants; and that the enlightened courts of that State will sustain Mr. Bringier in a litigation for the property. There is a novelty to me at least in the idea of the claim of the United States being barred by the lapse of time. Not apprised of any judicial decision to that effect in Louisiana, nor aware that a decision of the Treasury Department, adverse to Bringier, would preclude him from seeking a remedy in the courts, I desist from further comment on this topic.

It is suggested that this is not a solitary instance of similar transaction. The surveyor general, whose official station must furnish him much opportunity of knowing, does not admit the frequency or importance of analogous cases. An array of disastrous consequences, predicted to follow a resurvey of the land in question, is urged as a motive for confirming the claim.

This argument of public policy would, perhaps, be more properly directed to another quarter; and it is respectfully suggested, that the commissioner might not be acting within his proper province, if he should entertain such considerations as the guide of his conduct.

I have, &c. (Signed) ETHAN A. BROWN,
Commissioner.

Hon. LEVI WOODBURY,
Secretary of the Treasury.

TREASURY DEPARTMENT, 3*d June*, 1836.

SIR: Coinciding in the views of the surveyor general upon the case submitted in your letter of the 20th ult., it is the opinion of the department that Mr. Bringier is not entitled to a greater quantity of land under the acts of the 3d March, 1811, and 11th May, 1830, than a fair proportion of the neighbouring vacant lands, having due regard to the claim of others, to be ascertained and designated by actual survey under the superintendence of the surveyor general; and inasmuch as the survey made by Wilson does not appear to have been approved by the surveyor general, or to have been executed under his direction, or to conform to any general system of distribution, the same cannot be recognized as legal.

I am, &c.,
(Signed) LEVI WOODBURY, *Sec. Tre'y.*
Commissioner of the General Land Office.

SURVEYOR GENERAL'S OFFICE,
Donaldsonville, April 15th, 1837.

The foregoing, from page 1 to page 9 inclusive, (of this record, from page 49 to 58,) is a true copy of documents received with the letter of Ethan A. Brown, commissioner of the General Land Office, dated 20th June, 1836, all on file in this office.

(Signed) H. S. WILLIAMS,
Surveyor General.

GENERAL LAND OFFICE, 20*th June*, 1836.

SIR: Having examined the papers in relation to Mr. D. Bringier's back pre-emption entry, a report thereon was prepared early this year; but circumstances having prevented me from submitting it to the Secretary of the Treasury until the 20th ultimo, I now enclose, for your information, a copy thereof, together with the copy of the letter of the Secretary of the Treasury of the 3d inst., approving of the views taken of the subject, by which you will please be governed in acting on the case.

I am, very respectfully, sir, your obedient servant,
(Signed) ETHAN A. BROWN, *Commissioner.*

HENRY T. WILLIAMS,
Surveyor general, Donaldsonville, Louisiana.

SURVEYOR GENERAL'S OFFICE,
Donaldsonville, April 15th, 1837.

The above is a true copy of a letter on file in this office.
(Signed) H. T. WILLIAMS, *Surveyor General.*

I.

Certificate of confirmation of a part of Jordan tract, No. 139.

Jean Charles Arcenaux claims a tract of land situate on the east side of the river Mississippi, in the county of Acadia, containing three arpens three toises and five feet in front, and forty arpens in depth, and bounded on the upper side by land of and on the lower by land of

This is part of a tract of land of 8 arpens 3 toises and five feet in front, and forty arpens in depth, surveyed by Dn. Carlos Trudeau, in the year 1782, for the claimant, who sold the remaining five arpents; the land having been inhabited and cultivated ever since that period until on and after the 20th Dec., 1803.

Confirmed.

SURVEYOR GENERAL'S OFFICE,
Donaldsonville, April 18th, 1836.

The above is a true copy from the record book of confirmation in this office.
(Signed) H. T. WILLIAMS.

J.

No. 9.—*Original.*

RECEIVER'S OFFICE, SO. EAST. DIST. LA.
New Orleans, August 9th, 1834.

Received from Noel Jourdan, of the parish of St. James, the sum of three hundred and thirty-six $\frac{80}{100}$, dollars, being in full of the purchase money of his pre-emption right by virtue of an act of Congress authorizing the inhabitants of Louisiana to enter their back lands, approved 15th June, 1832, to a tract of land adjacent to and back of his front tract, situate in township No. eleven, range No. 3 east, and containing two hundred and sixty-nine $\frac{44}{100}$ superficial acres, at one dollar and twenty-five cents, as per register's certificate numbered No. nine.
(Signed) MAURICE CANNON,
Receiver of public moneys.

K.

Sale of a plantation by General Wade Hampton to Leroy Pope, April 6th, 1829.

Be it known, that on this eighth day of April, in the year of our Lord one thousand eight hundred and twenty-nine, and fifty-third of the in-

dependence of the United States of America, before me, Hugh K. Gordon, notary public in and for the parish and city of New Orleans, State of Louisiana, duly commissioned and sworn, personally appeared General Wade Hampton, of the State of South Carolina, occasionally residing in this State, who declared that he has sold, assigned and transferred, and does by these presents sell, assign, transfer and convey, with full guarantee against all debts, liens, mortgages, and incumbrances whatsoever, unto Leroy Pope, of Madison county, in the State of Alabama, the said party being also present, acknowledging possession, and accepting, all and singular that certain tract or parcel of land established and cultivated as a sugar plantation, situated in the parish of St. James, of this State, on the left bank of the river Mississippi, about twenty-two leagues above this city, known by the name of White Hall, being of an irregular form, and composed of a front tract measuring about twenty-six arpens six toises and two feet front on the river, by forty arpens deep, the lines closing towards the rear to thirty perches and sixty-eight chains in breadth, and containing five hundred and ninety-one and sixty-seven hundredths acres; the back tract adjoining the former in the rear from whence it runs forty arpens in depth, the lines opening towards the rear, and containing five hundred and ten acres, the said two tracts forming the plantation aforesaid, being the same which the said Hampton acquired by purchase of Michael Dovadon Bringier, by an act passed before me the said notary, dated the ninth day of February, in the year eighteen hundred and twenty-five, to the margin of which act a plan of said land is annexed and recorded, made by J. Wilson, surveyor, dated the seventeenth day of December, eighteen hundred and twenty-two, and to which these presents refer. The said plantation being now sold, together with all the buildings, improvements, rights, advantages, commodities and appurtenances thereon and thereunto belonging, as the same now stands, including the dwelling-house and all the furniture and utensils thereunto belonging, and all the oxen, waggons, carts, ploughs, gears, &c., belonging to the said establishment. The slaves now living and employed thereon, with their private property and tools, and the horses, and the next coming crop, being all that the vendor shall remove from the said plantation: to have and to hold the said described plantation, with the buildings and improvements and appurtenances aforesaid, unto the said Leroy Pope, his heirs and assigns, to his and their only proper use and behoof forever. And the said Wade Hampton, for himself and his heirs, shall and will warrant and forever defend the said described land, with the buildings and improvements thereon aforesaid, unto the said Leroy Pope, his heirs and assigns, against the lawful claim and claims of all and every person and persons whomsoever by these presents.

This sale is made for and in consideration of the sum of one hundred thousand dollars, payable in twenty years from the first day of January next ensuing, (1830) with interest thereon at the rate of six per cent. per annum, payable quarterly throughout the said time, say on the first day of January in each year, and until final payment of said principal sum; for which principal sum of one hundred thousand dollars, and the said

yearly interest, the said Leroy Pope has made and subscribed his certain bond or obligation dated this day, and which being countersigned and identified with these presents by me the notary, and delivered to the said vendor, receipt thereof is hereby acknowledged.

And this sale is made for the further consideration, that previous to, or during the month of February next ensuing, the said Leroy Pope shall, as by these presents he promises and obliges himself and his heirs to, place and put upon the said plantation to work and cultivate the same, at least twenty working slaves, one-third of whom shall be female; and said working slaves shall be exclusive of their present children and future increase. The said Leroy Pope promises and obliges himself and his heirs, to mortgage and hypothecate in due legal form unto the said Wade Hampton, his heirs and assigns, free and clear of all other debts, liens and mortgages, and incumbrances, to secure the said principal sum and interest.

And also, to secure the payment of the said principal sum and interest, the said Leroy Pope declared that he does by these presents mortgage and hypothecate unto the said Wade Hampton, his heirs and assigns, the said described land, with the buildings and improvements thereon, and hereafter to be made thereon, promising and engaging not to alienate, deteriorate, or incumber the same to the prejudice of this mortgage.

And whereas, no certificate has been produced in the premises from the recorder of mortgages of the parish of St. James, to state what incumbrances, if any, exist on record thereon, in the name of the said vendor, on the said described land, the said Wade Hampton, however, declared, that he hereby stipulates that there exists no mortgage or incumbrance in his name against said described land, except the mortgage which he granted in favor of the president, directors, and company of the Bank of Louisiana, by an act passed before me, the said notary, dated the fourteenth day of February, eighteen hundred and twenty-five, to secure the payment of a loan amounting to twenty-five thousand dollars, the balance of which, now unpaid, is five thousand five hundred dollars, and which balance the said Wade Hampton hereby promises and obliges himself and his heirs to pay off, and have said mortgage released and cancelled, at the falling due thereof, without expense or detriment to the present purchase; and, therefore, the said Leroy Pope hereby waives and dispenses with the above mentioned certificate, and releases the undersigned notary from all liability and want thereof.

The said Wade Hampton further promises and agrees to deliver the said plantation, improvements, and commodities, and appurtenances, as hereinbefore described, and sold, and place the same in the possession of the said Leroy Pope, his heirs or assigns, on or before the first day of February next ensuing.

Thus done and passed, at the city of New Orleans aforesaid, in the

presence of Felix Pedesclawe and Rene Marchand, witnesses, who hereunto subscribe their names with the parties, and me, the notary.

Signed, W. HAMPTON,
LEROY POPE,
R. MARCHAND,
H. PEDESCLAWE,
H. K. GORDON, *Not. Pub.*

A true copy of the original, extant on the records of the late H. [L. S.] K. Gordon, a notary, deceased, now in my possession as his successor in office.

(Signed) H. PEDESCLAWE, *Not. Pub.*

New Orleans, Oct. 14th, 1835.

L.—Sale of a plantation and slaves from Leroy Pope to Thos. Barrett.

State of Louisiana, city of New Orleans:

Be it known, that this day, before me, William Christy, a notary public, in and for the city and parish of New Orleans aforesaid, duly commissioned and qualified, personally came and appeared Leroy Pope, late of the State of Alabama, but at present a citizen of the parish of St. James, in this State, who declared, that for the consideration hereinafter expressed, he does, by these presents, grant, bargain, sell, convey, transfer, assign, and set over, with a full guarantee against all troubles, debts, mortgages, claims, evictions, donations, alienations, or other incumbrances whatsoever, (with the exception hereinafter named,) unto Thomas Barrett, of this city, present, accepting and purchasing for himself, his heirs and assigns, and acknowledging delivery and possession thereof, the following described property, to wit:

All and singular that certain tract or portion of land, established and cultivated as a sugar plantation, situate in the said parish of St. James, on the left bank of the river Mississippi, about twenty-two leagues above this city, known by the name of "*White Hall*," being of an irregular form, and composed of a front and back tract; the front tract measures about twenty-six arpens six toises and two feet front on the river, by forty arpens in depth, the lines closing towards the rear to thirty perches and sixty-eight chains in width, and containing five hundred and ninety-one acres and sixty-seven one hundredths of an acre; the back tract, which adjoins the above described in the rear, from which it runs forty arpens in depth, the lines opening to the rear, and contains five hundred and ten acres, which two tracts compose the aforesaid plantation, and which the said Pope purchased from General Wade Hampton, by an act passed before H. K. Gordon, late a notary public in this city, on the eighth day of April, 1829, and which is now sold, together with the buildings and improvements thereon, rights, privileges, customs, servitudes, ways, and appurtenances thereunto belonging, or in any ways appertaining, and all the farming utensils and stock, consisting of horses, oxen, cattle, sheep, hogs, wagons, carts, ploughs, spades, hoes, axes, &c., such as they were on the twentieth day of December last, with the exception of one gig,

household furniture, and three horses, which the said Pope reserves for himself.

Also, one hundred and forty-five slaves, which are on the said plantation, and which are of the description following, to wit:

Names.	Age.	Sex.	Names.	Age.	Sex.
Randall	32	Male.	Willis	26	Male.
York	26	"	Sam B.	28	"
Harey	21	"	Saul	28	"
Peter W.	24	"	Clem	26	"
Sam D.	20	"	Sam H.	27	"
Yorke H.	24	"	Big Ben	35	"
Washington	21	"	Jacob	35	"
Joe	21	"	Arthur	28	"
Fred	21	"	James Y.	28	"
Lewis	20	"	Richard	21	"
James B.	28	"	Peter Assicon	35	"
Sam	35	"	John	23	"
Dennis	28	"	Archer	22	"
Bogert	27	"	Rolla	23	"
Brister	25	"	Bedford	16	"
Sam	15	"	Isaac	40	"
Daniel	22	"	Dary	15	"
Bob	20	"	Simon	15	"
George	16	"	William	12	"
George	12	"	Yellow Ben	30	"
Miles	60	"	Abram	55	"
Peter Hark	40	"	Gunner Peter	60	"
Cyrus	16	"	Ned B.	50	"
Miles	13	"	Hott	60	"
Joe	12	"	Baron	50	"

Women.

Names.	Age.	Sex.	Names.	Age.	Sex.
Dolly	26	Female.	Eliza	25	Female.
Crecy	23	"	Maria	26	"
Polly R.	26	"	Fanny H.	30	"
Mary	17	"	Peggy	50	"
Ann	18	"	Nancy (luna)	35	"
Patty	22	"	Maria	22	"
Sucky	20	"	Sucky L.	35	"

List of Women—Continued.

Names.	Age.	Sex.	Names.	Age.	Sex.
Charity - -	35	Female.	Aggy - -	18	Female.
Manjmon -	60	"	Brully - -	24	"
Hannah -	37	"	Arceltina -	20	"
Anny - -	60	"	Milly G. -	55	"
Caroline -	12	"	Eliza - -	13	"
Betsy - -	12	"	Celia - -	12	"
Louisa - -	16	"	Kerseaht -	25	"
Margaret -	24	"	Polly - -	35	"
Fanny J. -	50	"	Henny - -	30	"
Mary - -	36	"	Maria - -	36	"
Venus - -	55	"	Lotty - -	16	"
Maria J. -	19	"	Martha -	15	"
Allina - -	35	"	Rose - -	12	"

Children.

Sarah, 3 to 4 years.	Amelia, 8 years.	Lucinde, 8 years.
William, 4 "	Letty, 1½ "	Ananias, 3½ "
Leroy, 5 "	Juliana, 7 "	Flora, 5 "
Sarah, 3 "	Harrison, 8 "	Rind, 7 "
Sarah, 1 "	Matilda, 6½ "	Smith, 1 "
Ananias, 2 "	Peter, 2 "	George, 5 to 6 "
Yorke, 10 "	Lucy W. 7 "	Anny, 2 mos.
Emanuel, 8 "	Francis & Emily, twin	Julia, 5 years.
Allen, 8 "	girls, 4 years.	John, 6 "
Mary L. 1 "	Robert, 6 "	Thomas, 1 "
Joe, 1½ "	Rosanna, 6 "	Chillet, 2 "
Nelson, 4 "	Alfred, 6 "	Miles, 6 "
Ned, 6½ "	Robert, 3 "	Jefferson, 3 "
John, 5 "	Philip, 5 "	Jones, 4 "
Martha, 1 "	Esther, 4 "	Alfred, 1½ "
Melinda, 3 to 4 "	Jacob, 11 "	Hyanie, 8 "
Harry, 8 "	Edmond, 3½ "	Five infants.
		Total - - 145

To have and to hold the said plantation, slaves, &c., unto the said purchaser, his heirs and assigns, to their proper use and behoof forever; and the said vendor, for himself and his heirs, the said plantation, slaves, &c., to the said purchaser, his heirs and assigns, shall and will warrant

and forever defend against the lawful claims of all persons whomsoever, by these presents. And the said vendor does moreover subrogate the said purchaser to all the rights and actions of warranty, which he himself has, or may have, against the vendors of his vendor, fully authorizing the said purchaser to exercise the said rights and actions, in the same manner as he himself might or could have done.

This sale is made for, and in consideration of, the sum of one hundred and fifty-one thousand and thirty-four dollars, which is to be paid in the manner following, to wit:

The said purchaser hereby assumes the payment of a bond or obligation for the sum of one hundred thousand dollars, drawn by the said Pope in favor of the said Wade *Thompson*, dated on the said eighth day of April, 1829, and made payable twenty years after date, which bond or obligation bears an interest at the rate of six per cent. per annum, which interest is to be paid annually, on the first day of January of each and every year, and which interest the said purchaser also obligates and binds himself to pay from the first day of January last, for and during the whole of the remaining term of the said twenty years, agreeably to the terms and conditions set forth in the said sale of the said plantation from the said Wade Hampton to the said Pope, which sale the said purchaser acknowledges he has seen, and obligates and binds himself unto the said Pope to hold him harmless in every respects, against the claim of the said Hampton, on the said plantation and seventy of the said slaves, to secure the payment of his said obligation and interest thereon as aforesaid.

And the said purchaser moreover assumes the payment of fifteen thousand eight hundred and thirty-one dollars and seventy-six cents, which the said Pope owes to Jacob Willcox and Richard Fearn, of this city, merchants, and to secure the payment of which, thirty-nine of the above named slaves are mortgaged; and the said purchaser also obligates and binds himself unto the said Pope, to hold him harmless against the said debt and mortgage.

And the said Pope now declared, that the above described plantation and slaves are subject to no other mortgage, to his knowledge, except the three hereinbefore referred to, that is to say, two to the said Wade Hampton—1st, on the said plantation, given by a clause in his said act of purchase; and 2d, the one given on seventy of the slaves, by an act passed before Joseph Paul Fabre, judge of the said parish of St. James, on the 23d day of February, 1830; and third, the one in favor of the said Willcox & Fearn as aforesaid.

And the said purchaser does, by these presents, dispense with the production of a certificate from the mortgage office of the said parish of St. James, to be annexed to this act as required by article 3,328 of the civil code, shewing the mortgages, if any, which exist on the said plantation and slaves; and he moreover exonerates me, the notary, from all responsibility whatsoever, which I may have incurred by passing this act without the production of such certificate.

And before closing this act, the said parties having gone into a settle-

ment of the above named account, declared, that they found that he, the said Pope, fell in debt to the said purchaser, or to Jno. Hagan & Co., (of which the said purchaser is a member,) in the sum of seven thousand two hundred and eighty-three dollars and forty-nine cents, which he, the said Pope, hereby acknowledges to be due to the said purchaser from him as aforesaid.

Thus done and passed, in my office, at the city of New Orleans aforesaid, in the presence of W. Firnny and W. M. Hull, witnesses, of lawful age, who hereunto sign their names, together with the said parties and me, the said notary, this eighteenth day of March, eighteen hundred and thirty-three.

Original signed, LEROY POPE,
THOMAS BARRETT,
W. FIRMNY,
W. M. HULL,
WM. CHRISTY, *Not. Pub.*

I certify the foregoing to be a true copy of the original act.

In faith whereof, I grant these presents under my signature, [L. S.] and the impress of my seal of office, at New Orleans, this 25th July, 1835.

(Signed) WM. CHRISTY, *Not. Pub.*

M.—*Copy of receipt No.* 101.

Receiver's office, eastern district of Louisiana, 1822, April 13, receipt No. 101.

Ml. Dovadon Bringier, residing in the county [of] Acadia, parish of St. James, purchased 510 acres for $637 $\frac{50}{100}$, being his pre-emption right, situated in the rear of lands confirmed to him.

I hereby certify, that I find the above entry in one of the registers of receipts now in this office.

(Signed) RICHARD M. CARTER,
Receiver of public moneys for the Southeastern district of Louisiana.

New Orleans, October 28th, 1836.

N.—*Evidence of Abraham F. Righter.*

Abraham F. Righter being duly sworn, doth depose and say, that in the month of July, 1829, he was appointed principal deputy surveyor of the United States for this district, and held that office until it was abolished in the month of May, 1831; during that period he received his instructions from the surveyor of public lands south of Tennessee; all communications from the General Land Office at Washington, in relation to surveys in this district, were received through the said surveyor of public lands south of Tennessee. In this manner he exercised a general superintendance over the surveys in this district. Deponent also occasionally applied to him for special instructions in particular cases, and in this manner acted under his superintendance. Deponent transmitted

the surveys, made through the surveyor of public lands south of Tennessee, to the Commissioner of the General Land Office, but never submitted those surveys for his approbation.

It was impossible for him to approve them, as the field notes were never sent to him, and all the information necessary to approve them as surveys was lodged in deponent's office.

When Gideon Fitz, esq., was appointed surveyor of public lands south of Tennessee, in the spring of 1831, he was charged to liquidate all claims for surveys in Louisiana, it being understood that a surveyor general would be appointed for Louisiana.

He required the field notes of surveys to be furnished him, for the purpose of comparing them with the accounts presented, and approved the maps of those surveys for which he paid; but he had no evidence before him of the nature of the claims, and could have exercised no judgment or discretion as to the titles or claims.

Deponent never thought it the duty of the surveyor of public lands south of Tennessee, to approve his surveys. Deponent considered his surveys, and his approval of surveys in this district, as absolutely binding upon the Government and individuals, when they conformed to the law and instructions given to him, and that no further sanction to them was necessary.

Deponent's attention, while principal deputy surveyor of this district, was called to the survey made by Mr. Wilson, one of his predecessors in office, for Mr. D. Bringier, by Mr. Foster, a deputy surveyor, who had contracted to survey the township in which it was situated, not having met with a survey of back land before which opened so much.

Deponent concluded to submit it in a letter to the surveyor of public lands south of Tennessee, which he did, enclosing a diagram of the front and back tract of the White Hall plantation. Deponent mentioned in his letter that the survey did not conflict with any other claimant, and asked his instructions as to the survey. He replied to deponent, by letter, that if there was vacant land within 40 arpens in the rear of Bringier, that deponent must give his quantity to him, as he had bought the lands from the Government, but recommended that the survey should be extended to the depth of forty arpens, Wilson's survey not extending so deep; but left this to the exercise of deponent's discretion.

Deponent thereupon caused the claim to be resurveyed by Mr. Foster, and run to forty arpens in depth, diminishing the opening for that purpose. The survey having been made in this manner, deponent approved and recorded it, deponent thinks on the 10th of June, 1836. He did not submit the survey to Mr. Dunbar, the then surveyor of public lands south of Tennessee, under whose superintendence he caused it to be made, as he did not then, and does not now, believe that was his duty. The township map, however, was sent to Mr. Dunbar, with Mr. Foster's account, both approved by deponent, and exhibiting the survey made for M. D. Bringier.

There being no funds to pay for the survey, it remained there until Mr. Fitz was appointed, and it appears he approved it by his signature;

though deponent considers that added nothing to its validity. Deponent has seen similar surveys made before and since, and surveys made under the late law, and lines run in every direction to give claimants their quantity.

Deponent considered it his duty, in surveying the pre-emption claims to back lands, to give every man the quantity purchased by him from the United States, if there was not a conflicting claimant who had purchased while the pre-emption laws were in force; but, of course, surveyed the lands as much in the rear of the claimant as possible, and in such a manner as not to cut up the public land more than he could help; that was the reason he changed the survey so as to run it to the whole depth of forty arpens.

The letters from him to Mr. Dunbar, above alluded to, of which he left the rough draft in the office of principal deputy surveyor at Donaldsonville, and the answer of Mr. Dunbar, which he filed in the office, has been searched for by deponent and Col. Williams, the surveyor general, but they have been unable to find them.

Sworn to and subscribed, at New Orleans, this 22d day of April, 1837, before me.

O.—Sale of plantation [of] Michel Dovadon Bringier to Wade Hampton, February 9th, 1825.

State of Louisiana, city of New Orleans:

Be it known, that on this ninth day of February, in the year of our Lord one thousand eight hundred and twenty-five, and forty-ninth of the independence of the United States of America, before me, Hugh K. Gordon, notary public in and for the parish and city of New Orleans, duly commissioned, personally came and appeared Mr. Michael Dovadon Bringier, of parish of St. James, in this State, planter, who declared that he has sold, assigned, transferred, and conveyed, and does, by these presents, grant, bargain, sell, and convey, unto General Wade Hampton, of this State, with full guarantee against all debts, liens, mortgages, or incumbrances, whatsoever, as it accordingly appears from the certificate of the judge of the parish of St. James, dated the fourth of February current, and also by the certificate of the recorder of mortgages in this city, of even date herewith, and both hereunto annexed, a certain tract of land or plantation, situated in the said parish of St. James, on the left bank of the river Mississippi, about twenty-two leagues above this city, being composed of two several tracts, to wit:

A tract of land measuring about twenty-six arpens six toises and two feet front on the river, by the usual depth of forty arpens, diminishing towards the said depth, and containing about five hundred and ninety-one 67-100 English acres, more or less, bounded on the upper side by land the property of widow Bringier, and on the lower side by land the property of widow Paul Le Blanc; and which tract the said vendor acquired by purchase of the heirs of the late Manus Paul Bringier, deceased, by act passed before Alexander Chapden, a justice of the peace of said parish of St. James, and recorded in the office of the judge of said parish,

under date of the eleventh day of June, 1821; a copy whereof, duly certified by said judge, being now exhibited in the premises.

The second being a tract of land containing five hundred and ten acres, adjacent to, and back of, the above described front tract, and opening towards the rear; which said last tract the said Michel Dovadon Bringier claimed and acquired by rights of pre-emption, as appears by the receipt of the receiver of the public monies in this city, dated the thirteenth day of April, 1822, for the sum of six hundred and thirty-seven dollars and fifty cents, being the purchase money thereof, and also by the certificate of the register of the land office for the southeastern district of the State of Louisiana, number one hundred and one, dated the twelfth day of February, 1823, the said receipt and certificate being now exhibited in the premises. The said plantation, composed of the two tracts above mentioned, is hereby sold and conveyed as it now stands, and as the same is set forth and described upon the plan of survey thereof made by J. Wilson, land surveyor, dated the seventeenth day of December, 1822, and hereunto annexed and identified to make part of this act; together with all the buildings, improvements, commodities, and appurtenances, on the said plantation, or thereunto belonging, including all the apparatus in and belonging to the sugar house, as the mill kettle, coolers, &c., a large wheel for a corn mill, all the cane plants in the field, and also all the cane and fodder now in the brick yard, and all the materials in and about the mansion house, originally intended for its repairs or improvements; to have and to hold the said plantation, together with the buildings, improvements, and appurtenances aforesaid, and all the rights, privileges, and advantages, thereunto belonging and appertaining, unto the said Wade Hampton, his heirs, and assigns, to his and their only proper use and behoof forever.

And the said Michel Dovadon Bringier, for himself [and] his heirs, the said described plantation, with the buildings, improvements, commodities, rights, and advantages aforesaid, unto the said Wade Hampton, his heirs, and assigns, shall and will warrant, guarantee, and forever defend against all and every person whomsoever, claim and claims whatsoever, by these presents.

This sale is made for and in consideration of the sum of fifty thousand dollars, and which sum is declared to have been paid by the said Wade Hampton to the said Michel Dovadon Bringier, before the signing of these presents, and *out* of the presence of me, the notary, and the subscribing witnesses; receipt of which sum, in good and lawful money, the said Michel Dovadon Bringier does hereby acknowledge, and grants for the same full discharge and acquittance; renouncing the benefit of the exception, *non numerata* pecunia.

The said Wade Hampton being also present, declared that he accepts this act; that he is in possession of said plantation and appurtenances, well acquainted and contented therewith; and he has received from said vendor eight several documents sustaining the title to said described land, as deriving to him the said vendor, to wit: five certificates and plans of surveys, made by Charles Trudeau, the surveyor general of the Spanish

Government in the year 1782, of five several tracts of land adjoining each other, and of which the present front tract forms a part; the said copy of the sale to him from the heirs of Bringier, and the said receipt and certificate of the receiver and register of the land office for the said back tract claimed by right of pre-emption.

And as it appears by the certificate of the judge of the said parish of St. James, dated the fourth of this current month, and also by the certificate of the recorder of mortgages in this city, dated this day, and both hereunto annexed, there is no mortgage recorded in said parish, nor in the mortgage office in this city, against the said Michel Dovadon Bringier, on the land and improvements herein before described.

Thus done and passed, at the city of New Orleans, the day and year aforesaid, in the presence of Jno. Peter Kin and Felix Brunel, both of said city, witnesses, who hereunto subscribe their names, with the said parties and me, the notary.

(Original signed,) ML. DOVADON BRINGIER,
W. HAMPTON.

BRUNELL,
JNO. PETER KIN.

H. K. GORDON, *Not. pub.*

I certify the foregoing to be a true copy of the original extant in my current register. In faith whereof, I grant these presents under [L. S.] my signature and seal of office, at New Orleans, this 2d day of March, 1825.

(Signed,) H. K. GORDON, *Not. pub.*

Annexed to this act is the plan of the described plantation. (Copyed.)

Order of 12*th February*, 1838.

JOSEPH LANDRY vs. THOMAS BARRETT. } No. 15,322.

This cause came on to-day for trial before the court. Winchester and Taylor for plaintiff; Preston, Porter, Bryce, Pierce, for def't.

When, after hearing testimony and argument of counsel, the court order that the same be continued till to-morrow morning at 8 o'clock.

Order of 13*th Feb.*

LANDRY vs. BARRETT.

This cause continued from yesterday, came on again to-day for trial before the court; when, after hearing argument of counsel, the court order that the same be continued.

Order of 14*th Feb.*, 1838.

LANDRY vs. BARRETT.

This cause continued from yesterday, came on again to-day for trial

before the court; when, after hearing argument of counsel, the court order that the same be continued till to-morrow.

Order of Feb. 15*th*, 1838.

LANDRY
vs.
BARRETT.

This cause continued from yesterday, came on again to-day for trial before the court; when, after hearing argument of counsel, the court order that the same be continued till to-morrow morning at 8 o'clock.

Order Feb. 16*th.*

LANDRY
vs.
BARRETT.

This cause continued from yesterday, came on again to-day for trial before the court; when, after hearing argument of counsel, the court order that the same be continued till to-morrow.

Order Feb. 17*th.*

LANDRY
vs.
BARRETT.

This cause continued from yesterday, came on again to-day for trial before the court; when, after hearing argument of counsel, the court order that the same be continued.

Order Feb. 19*th*, 1838.

LANDRY
vs.
BARRETT.

This cause continued from Saturday, came on again to-day for trial before the court; when, after hearing argument of counsel, the court order that the same be continued till to-morrow.

Order of Feb. 20*th*, 1838.

LANDRY
vs.
BARRETT.

This cause continued from yesterday, came on again to-day for trial before the court; when, after hearing argument of counsel, the court order that the same be continued till to-morrow.

Order of Feb. 21*st*, 1838.

LANDRY
vs.
BARRETT.

This cause continued from yesterday, came on again to-day for trial before the court; when, after hearing argument of counsel, the court order that the same be continued till to-morrow.

Order of Feb. 22d.

This cause continued from yesterday, came on again to-day for trial before the court; when, after hearing argument of counsel, the court took the same under consideration.

Judgment and reasons, filed 22d March, 1838.

LANDRY, vs. BARRETT. } JOURDAN, vs. BARRETT.

These two suits have, by consent of parties, been consolidated and tied together.

They are petitory actions for tracts of land in the parish of St. James, adjacent to, and back of, tracts possessed by the plaintiffs on the left bank of the Mississippi, and fronting on that stream.

Joseph Landry's front tract has a width of six arpens on the river, by forty arpens in depth, and was confirmed by the Government of the United States, under number 26.

In virtue of an act of Congress, approved 15th June, 1832, Joseph Landry, on the 8th March, 1836, purchased of the United States 154 acres $\frac{21}{100}$, adjacent to, and back of, his front tract, just mentioned.

He complains that defendant has illegally taken possession of, and in violation of his (Landry's) rights, exercise acts of ownership upon thirty-one superficial acres, more or less, of the land so purchased of the United States.

Noel Jourdan, the other plaintiff, is proprietor of a tract fronting on the Mississippi, eight arpens, more or less, upon the ordinary depth of forty arpens, in virtue of a title confirmed by the United States; and states, that under the act [of] 15th June, 1832, he purchased of the United States, on the 9th August, 1834, two hundred and sixty-nine $\frac{44}{100}$, superficial acres, adjacent to, and back of, his said front tract.

He complains that the defendant, in violation of his rights, has taken possession of thirty-three superficial acres, more or less, of the land purchased by him (Jourdan) from the United States aforesaid.

Both plaintiffs claim the property as described in their respective petitions and damages.

The defendant claims the property sued for, by purchase from Leroy Pope, who bought of Wade Hampton, who bought of Michael D. Bringier, who bought of the United States, on the 13th April, 1822, 510 acres of land, adjacent to, and back of, a front tract belonging to him, of 27 arpents, or thereabout, front on the Mississippi, by 40 arpens in depth. This purchase was made under an act of Congress, approved the 11th May, 1820.

The front tracts of the parties litigant are situate on a point or convex bend of the river Mississippi; and as their side lines, under the original titles, have a course, as near as may be, at right angles with river opposite to them, they necessarily converge, making the tracts narrower, at the depth of forty arpens, than they are at the river. This depth of

forty arpens, was very early adopted in the colony of Louisiana, and is, with some exceptions, common to all French and Spanish grants in that colony. Hence the phrase, so familiar in our land titles, of "ordinary depth," and as synonimous with 40 arpens.

A second concession was frequently made in the rear of the original one, to the front proprietor, thus making his depth 80 arpens; and what was merely customary at that time, was converted, after the change of government, into a legal right, for a limited time, by various acts of Congress.

Those acts are three in number. The first was passed 3d March, 1811; the second on the 11th May, 1826; and the third on the 15th June, 1832.

A feature common to all these acts is their limited duration.

Those of 1811 and 1832, are limited to 3 years each; that of 1820, to two years from the day of its passage.

The act of 1820 revived the fifth section of the act of 1811. But the act of 1832 does not refer to any previous law, although copied verbatim from the fifth section of the act of 1811. The right of pre-emption conferred by each of these acts became void, if not exercised within the delay fixed by the terms of the act.

Consequently, a purchase made after the 15th June, 1835, was too late to give the purchaser a title. But the receipt of the plaintiff Landry, signed by the receiver of public monies for the eastern land district of Louisiana, is dated the 8th March, 1836. At that date, his rights of pre-emption had ceased to exist. In a petitory action, no principle is better settled than that the plaintiff must succeed by the strength of his own title, and not by the weakness of his adversary's.

As regards the plaintiff Jourdan, his purchase was evidently made within time, and under the operation of the law of 1832. The thirty-three arpents claimed by him, are adjacent to, and back of, a tract confirmed to him by the United States.

Were these thirty-three arpents vacant lands at the time of Jourdan's purchase?

The Government, no more than any other vendor, could give a better title than it possessed. If the land was already sold, the sale to Jourdan was an illegal one; tortious on the part of the Government officers, and null as regarded third persons.

The warrantor of defendant Bringier, purchased, as already stated, on the 12th April, 1822, and within the period limited by the pre-emption law of 1820.

But it is contended, that there were two fatal irregularities in this purchase: 1st, the quantity of land purchased by Bringier was greater than he was entitled to, under a proper construction of the pre-emption law in question.

2d. That the purchase should have been preceded by a survey, defining the boundaries.

1st. The counsel of plaintiffs have, throughout their argument upon this ground of objection, taken the ideas of a right and of a claim as

synonimous. And the surveyor general of the United States for Louisiana, Mr. Williams, has evidently assumed the same premises; for, in his township map of the litigated and circumjacent land, made in 1834, this officer has apportioned out to the several front proprietors, including plaintiffs and defendants, the whole of the lands lying back of, and adjacent to, their front tracts, on a prolongation of the extreme side lines of the converging tracts, to the depth of eighty acres to the river, or forty from the back limit of the front tracts. Such an apportionment, made in 1834, under the pre-emption law of 1832, evidently took for granted, that the rights of front proprietors, who made no claims until the year 1832, were not prejudiced or divested, by their neglect to enter their lands under the pre-emption law of 1811 and 1820, the lands back of, and adjacent to, their front tracts.

In virtue of what law, did the surveyor general, Williams, make this apportionment in the year 1834? Avowedly, in virtue of the act of 1832. See his evidence.

This act could not have been intended to control any but claims or purchases made under it. If, in express terms, it had purported to regulate purchases made many years before, it would have been an ex post facto law, and so far unconstitutional and void.

But Bringier, or his vendee, made most assuredly no claims for back lands, under the act of 1832. And yet, while his purchase of 510 acres is curtailed very considerably in favor of his neighbours, there are still some hundreds of acres allotted to him on this township map.

Here is a recognition by the surveyor general of Bringier's having acquired the title of the United States to some lands back of, and adjacent to, his front tract.

I look in vain for the source from which emanates this pretended authority on the part of a surveyor of the public lands, or even of the Secretary of the Treasury, to deprive a man of his property.

A title once vested is clearly beyond his control; he can no more modify it than he can take it away altogether. In the year 1822 Bringier made his purchase by the terms of the act of Congress, under which he bought his purchase, dated from the notice of his claim given to the register of the land office. This was done on the 12th April. All the neighbouring front proprietors might have exercised the same rights of pre-emption up to the 11th May, of the same year. But what was the consequence if they did not? In the words of the statute, their right of pre-emption ceased, and became void. The right of pre-emption was revived many years afterwards; but this revival did not, and could not, interfere with, modify or destroy, rights vested in third persons, who had availed themselves of the previous pre-emption law while it existed, and had, by greater diligence than their neighbours, secured the ownership of the back lands. This is conformable to the plainest principles of natural law, and the contrary doctrine could only have arisen from the confusion of ideas above mentioned, the confounding of a right with a claim.

The right under the act of 1822 was a right to enter vacant lands, and none other lands; that is to say, vacant at the date of that act. Go-

vernments, like individuals, can only rightfully dispose of what belongs to them; and the argument cannot, for a moment, be tolerated that they are free to make a sale or partition of what they have already alienated.

2d. This brings me to the consideration of the other argument against the defendant's title. It is contended, that the formalities required by law not having been fulfilled, the sale to Bringier was a nullity.

No survey appears to have preceded the sale to Mr. Bringier.

Various laws have been quoted to prove that the sales of the public domain must invariably be preceded by a survey. See pages 349, 420, 456, 460, 482, 487, 570, 587, and 590, of the land laws.

There is no doubt, from an inspection of these laws, that all *public* sales of the lands of the United States must be preceded by surveys. These surveys are uniform in their character in each land district, starting from a basis meridian line, and continued east, west from such meridian, by ranges of townships, each of which townships is six English miles square, and is divided into thirty sections or square miles—these last being again divisible into quarter sections. These general surveys must, accordings to one of the statutes, be carried on with sufficient despatch to allow of twenty townships being offered for sale twice a year in each land district. When the surveys have been returned to the General Land Office, the President of the United States issues his proclamation ordering the sales to be made by public auction, and designating the time and place of such sale.

Now the sale to the defendant's warrantor, Bringier, was a private sale, made in virtue of particular statutes, which must be viewed, as deviations from the general system of land sales.

An act of Congress, passed the 24th February, 1810, and found at page 570 of the land laws, declares it is true, that every applicant for purchase, at private sale, at any of the land offices of the United States, shall produce to the register a memorandum in writing, describing the tract in which he shall enter by the proper number of the section, township, and range, and subscribing his name thereto. This act has been pressed on my consideration as decisive of the question. The memorandum, given by Bringier to the register, did not describe the tract claimed by the proper number of the section, township, and range, for one reason, among others, that this was impossible, the township surveys not having been extended to that part of the country at the time. See the testimony of Samuel H. Harper, then register of the land office in this district, on this head.

But we must look to the act of 1811, and not to that of 24th Feb., 1810, for information respecting the formalities which it was necessary for Bringier to observe in his purchase or entry. If we find it differ from that of 1810, the latter, as being the earlier statute, is *pro tanto* repealed.

The dispositions of the act of 1811 on this subject are as follows: "Every person entitled to the benefit of this section (sect. 5) shall, within three years after the date of this act, deliver to the register of the proper land office a notice in writing, stating the *situation and extent* of the land he wishes to purchase, and shall also make the payment, &c."

Nothing is here said about a description by the proper number of the section, township, and range. In the notice given by Bringier, the situation and extent of the tract of land he wished to purchase are given; and where I find the requisitions of the statute substantially complied with, there is the less reason for holding the claimant to an impossibility.

It may, indeed, well be questioned whether the act of 1810 could, in any case, be considered *and* applicable to purchasers under the 5th section of the laws of 1811, revived by the law of 1820.

That pre-emption law recognized a mode of surveying totally different and irreconcileable to the township surveys. The French and Spanish surveys in Louisiana had no reference to a basis meridian line, by which the position of every acre comprised in them could be determined with mathematical exactness. They referred to natural boundaries—a water course, for instance—and not to imaginary lines.

The land measures are different—the French arpent in the one case, the English acre in the other. Each grant ran its side lines for an arbitrary extent in depth, and at various angles, from the front line. To prevent, indeed, the hopeless confusion that would attend the attempt to blend two kinds of surveys so different in all their elements, the same statute of 1811, in its second section, (page 587 of the land laws,) provides, that the principal deputy surveyors of the territory of Orleans be authorized, in surveying public lands in said territory, adjacent to a river, lake, creek, bayou, or water course, to vary the mode of surveying heretofore prescribed by law, so far as relates to the contents of the tracts and to the angles and boundary lines; provided, that such deviations from the ordinary mode of surveying be made with the approbation of, and in conformity to, the general instructions which may be given to that effect by the surveyor of the public lands south of Tennessee.

That the claims of back lands, under the pre-emption right, given by the fifth section of this law, were to be surveyed in a different [way] to the usual mode of surveying the United States lands, is obvious from the expressions of the fifth section: "the principal deputy surveyor of each district shall be, and is hereby, authorized, under the superintendance of the surveyor of the public lands south of the State of Tennessee, to cause to be surveyed the tracts claimed by virtue of this section." What is it that the principal deputy is authorized to survey? A township or a section of public land? No; but a vacant tract, back of, and adjacent to, a confirmed French or Spanish grant, not to exceed in dimensions the front tract, nor to extend back more than forty *arpents*. Note that word arpents. It is certain, that this measure is not used by American surveyors, for the admeasurement of townships and sections.

But it is contended, that even if it were not necessary for Bringier to describe his claim by township, or yet the situation and extent of it, required to be specified in the notice to the register, could only be ascertained by definite metes and bounds, the result of the operations of a surveyor.

I have to come to a different conclusion. The purchase of each claimant dates, according to the law, from the delivery of the notice.

Each proprietor, interested, had a right to deliver this notice on the first day the law went into operation. The right of such proprietor was not one which impaired, if he delivered this notice only on the last day the law was in force. But suppose, what is extremely probable, that in the course of the two or three years that elapsed between the first and the last of these dates, every one of a dozen or twenty confirmees, on a convex bend of the river, and whose side lines all converged towards a common centre, should have notified the register of a claim for vacant land, back of, and adjacent to, his front tract, and of equal extent to his front tract. It is obvious, that each could not obtain his full quantity. What was then to be done to settle so many conflicting claims, of precisely equal rank? The act defines the [course] to be pursued, with the utmost clearness: "In all cases where, by reason of bends in the river, lake, creek, bayou, or water course, bordering on the tracts, and of adjacent claims of a similar nature, each claimant cannot obtain a tract equal to the adjacent tract already owned by him, to divide the vacant land, applicable to that object, between the several claimants, in such manner as to him may appear most eligible." Who is to divide? The passage just quoted, is the second member of a sentence, and, by reference to the first member, we find it to be the principal deputy surveyor of each district, respectively, who is therein authorized, under the superintendance of the surveyor of the public lands, south of the State of Tennessee, to cause to be surveyed the tracts claimed by virtue of this section, and in all cases, &c. The surveying and the dividing being in such close juxtaposition, might evidently be, in the case above supposed, included in one operation. There is nothing, at least in the law, which prohibits such postponement of the survey. The principal deputy surveyor is authorized (not commanded) to survey. Nor must such plat of survey, by the terms of the act, be filed with the register, *on* the delivery of the notice, followed by the payment, instantly divests the title of the United States.

The facts connected with Bringier's survey are as follows:

The pre-emption act of 1820 expired, and the principal deputy surveyor of the eastern land district of Louisiana, Mr. Wilson, surveyed Bringier's purchase of 510 acres of vacant land, back of, and adjacent to, his front tract, without its being necessary to exercise the discretionary powers vested in him by this act; inasmuch as the contingency did not happen for the exercise of those powers, there were no adjacent claims of a similar nature, and consequently Bringier could, and did, obtain his full quantity. Wilson's plat of survey is dated the 17th of December, 1822. It was not included in a township map, because there was no township survey of that neighborhood until several years afterwards. In the years 1829 and 1830, the townships within the limits of which this tract is situated, was surveyed, and the township map was submitted to the surveyor of public lands, south of the State of Tennessee.

This *made* included the detached survey made in 1822, by Wilson for Bringier, which survey was modified by the surveyor of public lands south of Tennessee, and Righter, the principal deputy surveyor for the

eastern land district of Louisiana; and the map so modified, was approved by the former officer on the 9th March, 1832. What right these officers had to change the survey of Wilson, I will not here stop to inquire. The defendant has adopted the modification, and now claims under Righter's survey, which contains the same area as Wilson's, and was made in the spring of 1830. The plaintiffs contend, that when Mr. Fitz, the surveyor south of Tennessee, approved the map of Righter, he was without jurisdiction in Louisiana; the approval being dated in 1832, and the office of surveyor general of Louisiana having superseded that of principal deputy for the district east of the island of Orleans, on the 1st May, 1831.

By the testimony of Righter it appears, that his map was made and submitted to the surveyor south of Tennessee; and the modification of Bringier's survey, made at the suggestion of the latter, in the year 1830, while the office of principal deputy surveyor still existed, and the surveyor south of Tennessee still had a superintending power over surveys in that part of Louisiana.

It is not seen how an act of Congress of 1831, can effect acts legally done before its passage. The report by the principal deputy surveyor had been made to his legal superior at the time. The field notes, and other necessary documents, had been transmitted to that legal superior, and I cannot admit, that the power of the latter (whose office was not abolished by the act of 1831) of ratifying the acts thus legally under his cognizance, should be taken away by implication.

The surveyor general of the United States for Louisiana, has taken upon himself to treat the acts of his predecessors as nullities; and, by a township map, approved in 1834, has made entire distribution of the back lands of the defendant and his neighbours. This survey, though it appears to have met with the approbation of the Commissioner of the Land Office, and the Secretary of the Treasury, I must reject, as governing the rights of the parties herein, for the reasons already given by me.

The mature deliberation which I have given the subject, has brought my mind to the conclusion, that claims made under the pre-emption law of 1832, could not have a retrospective operation, so as to defeat or modify rights vested under the pre-emption law of 1820, long previously expired; that the principal deputy surveyor, Wilson, did not violate the law, in the survey made by him of the back tract of the White Hall plantation; but, on the contrary, that the apportionment made by the surveyor general, Williams, of the *laws* in question, as vacant lands, was authorized by law, and a violation of the rights of the defendant.

It is therefore ordered, adjudged, and decreed, that there be judgment in each of the present suits, for the defendant, Thomas Barrett, with costs.

(Signed) A. M. BUCHANAN, *Judge.*

Petition of Appeal, filed 5th April, 1838.

NOEL JOURDAN, vs. THOMAS BARRETT, and al.

JOSEPH LANRDY, vs. THOMAS BARRETT, and al.

To the honorable the judge of the first judicial district court of the State of Louisiana, holding sessions in and for the parish and city of New Orleans:

The petition of Noel Jourdan and Joseph Landry, both residing in the parish of St. James aforesaid, would represent to your honor, that on the 22d day of March, 1838, a final judgment was rendered in your honorable court, in the above entitled causes, in favor of the defendants, and against your petitioners.

Your petitioners allege, that the said final judgment was rendered against law and evidence, to the great injury of your petitioners; allege, that the amount in dispute, in either and both the said cases, far exceeds the sum of three hundred dollars; allege that, by consent of the parties, plaintiff and defendant, the said causes were, by order of your honorable court, consolidated and tried together, and upon the same testimony. Wherefore, the premises considered, your petitioners pray your honors to grant them an appeal from the final judgment to the Supreme Court, upon their complying with the conditions imposed by law in such cases, and by giving bond and good security in such sum as your honor may direct, and conditioned according to law. And they pray for all such other and further relief, as the law and equity of their case may require.

(Signed) BEN. WINCHESTER,
Att'y for Pet's.

Order.

An appeal is allowed in this case, according to law, returnable in the Supreme Court, on the second Monday of next month, on the appellants' giving bond, with Thomas E. Ives their security, in the sum of two hundred dollars, with condition as the law directs.

(Signed) A. M. BUCHANAN.
5th April, 1838.

Bond.

Know all men by these presents, that we, Noel Jourdan and Joseph Landry, as principals, and Thomas E. Ives, as security, are held and firmly bound unto Thomas Barrett, the heirs of Wade Hampton, and M. D. Bringier, their executors, administrators, and assigns, in the sum of two hundred dollars; for the payment whereof, we bind ourselves, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated in the city of New Orleans, on this 5th day of April, in the year of our Lord one thousand eight hundred and thirty-eight.

Whereas, the above bound Noel Jourdan and Joseph Landry have,

this day, filed a petition of appeal from a final judgment rendered against them in the suits of Jourdan vs. Barrett and al., and Landry vs. Barrett and als., in the first judicial district court of the State of Louisiana, on the twenty-second day of March, 1838;

Now, the condition of the above obligation is such, that the above bound Noel Jourdan and Joseph Landry, shall prosecute their appeal, and shall satisfy whatever judgment may be rendered against them; or that the same shall be satisfied by the proceeds of the sale of their estate, real or personal, if they be cast in the appeal; otherwise, that the said Thomas E. Ives, surety, shall be liable in their place.

(Signed) NOEL JOURDAN, [L. S.]
JOSEPH LANDRY, [L. S.]
THOMAS E. IVES. [L. S.]

Service acknowledged, April 11th, 1838.

(Signed) ISAAC T. PRESTON,
For heirs of Hampton.
" JAMES PORTER,
For M. D. Bringier.

STATE OF LOUISIANA:

I hereby certify, the above and foregoing 93 pages do contain a transcript of all the proceedings, as well as of all the documents filed, and all the testimony adduced, on the trial of the consolidated *courses*, wherein Noel Jourdan and Joseph Landry are plaintiffs, and Thomas Barrett and als., are defendants, instituted in this court, and now on the records thereof, under Nos. 15,277 and 15,332, (except the charts and maps, marked as documents A, B, C, D, G.)

In testimony whereof, I have hereunto set my hand, and affixed the seal of said court, at the city of New Orleans, on the 14th day of April, in the year of our Lord one thousand eight hundred and thirty-eight, and in the 62d year of the independence of the United States.

[L. S.]

(Signed) JOHN L. LEWIS, *Clerk.*

I hereby certify, the foregoing transcript of the record of the case therein mentioned, contains all the evidence (agreeably to the clerk's certificate) adduced by the parties, on the trial of the cause in the first instance.

14*th day of April*, 1838.

(Signed) A. M. BUCHANAN, *Judge.*

Judgment of the Supreme Court.

SUPREME COURT OF THE STATE OF LOUISIANA.

Monday, January 21st, 1839, the court met. Present, the honorable F. X. Martin, hon. Henry A. Bullard, hon. Henry Carleton.

NOEL JOURDAN and JOSEPH LANDRY, app'ts,
vs.
THOMAS BARRETT and al., app'ees. } No. 3,354.

Appeal from the first judicial district court.

In this cause the court this day delivered their opinion in writing, in the words and figures following, to wit:

The plaintiffs assert title to different portions of land possessed by the defendant, which they purchased of the *the* United States, in virtue of the acts of Congress, granting to front proprietors the right of purchasing public lands back of, and adjacent to, their front tracts. The evidence of title which they exhibit, to wit, certificates of purchase, and an apportionment of the lands among conflicting claimants under the same acts of Congress, under the superintendance of the surveying department, appears to us sufficient to authorize a judgment in their favor, unless the title of the defendant be older and better, or the plea of prescription which he sets up, should be sustained. Our attention, therefore, must be directed principally to the title of the defendants.

The latter's claim under Bringier by several mesne conveyances, and the record shews that Bringier was the proprietor of a tract of land on the river Mississippi, having a front of about twenty-seven arpens, with the ordinary depth of forty, and was clearly of that class of persons who had a right *a* under the pre-emption laws, to purchase to a greater or less extent the adjacent public land in the rear of their plantation, under the act of 1820, to which we shall hereafter allude more particularly, Bringier did purchase a quantity of land in his rear not exceeding the superficies of his front tract. This purchase embraced the loccis in quo; neither party has a patent, and in this respect both parties stand upon the same footing. The question therefore presented for our consideration is, whether Bringier purchased more land than he was entitled to, under the act of 1820, in relation to the plaintiffs, who were also front proprietors, and in consequence of a bend in the river were entitled to purchase a part of the same land entered by Bringier. This renders it necessary to examine critically the acts of Congress under which the parties claim.

The right of preference in question was first extended to the proprietors of front tracts by the 5th section of an act of Congress passed in 1811, entitled "an act providing for the final adjustment of claims to lands, and for the sale of the public lands in the territories of Orleans and Louisiana, &c." This part of the statute expired by its own limitation in three years, and was revived for two years by the act of May 11th, 1820, entitled "an act supplementary to the several acts for the adjustment of land claims in the State of Louisiana." It was twice afterwards revived for limited periods in 1832 and 1835. Bringier purchased under the act of 1820, and the pl'ffs under those of 1832 and 1835, after a lapse of many years, during which no such law existed.

That act of Congress accords to every owner of a first tract of land "a preference in becoming purchaser of any vacant tract of land adjacent to and back of his own tract, not exceeding forty arpens in depth, nor in

No. 1. No. 2. quantity of land that which is contained in his own tract. It is made the duty of the principal deputy surveyor of each district under the superintendance of the surveyor of public lands south of the State of Tennessee, to cause to be surveyed the tracts claimed by virtue of this section;" and it provides that he shall in all cases where, by reason of bends in the river, &c., &c., bordering on the tract, and of adjacent claims of a similar nature, each claimant cannot obtain a tract equal in quantity to the adjacent tract already owned by him to divide the vacant land applicable to that object between the *several claimants* in such [suit] *was* as to him may appear most equitable. The same section, after providing for the manner of giving notice, and fixing the mode and time of payment, concludes by declaring, that if any such person shall fail to deliver such notice within the said period of three years, or to make such payment or payments at the time above mentioned, the right of pre-emption shall cease and become void; and the land may thereafter be purchased by any other person in the same manner and on the same terms as are or may be provided by law for the sale of other public lands, &c.

The front tracts of all the parties to this suit are situated upon a point formed by a bend of the river, and the side lines converge in such a manner as that there is not sufficient land in the rear to give to each the quantity equal to that contained in his original tract. It is therefore clear, that if all had purchased under the act of 1820, it would have become the duty of the surveying departments to apportion the land among them; but in point of fact Bringier alone delivered his notice and made his purchase, during the existence of that act of Congress, of a tract not exceeding the quantity contained in his front tract; and this question is, whether the purchase of Bringier is to be curtailed, so as to allow to the plaintiff their equitable proportion—they having given their notice, and made payment, under a subsequent law, after an interval of more than ten years.

We may premise that, in our opinion, the absence of patents can have no influence upon the rights of the parties in this case, but that those rights are to be determined by the rules which regulate the contract of sale. The sovereign having made an offer or proposition to sell, subject to certain conditions and restrictions, and that proposition having been accepted, and the terms, as to payment of the price, complied with, we have only to inquire, whether the title, thus acquired by Bringier, became indefeasable and absolute, as soon as the law expired, when no other proprietor, whose pretensions might interfere with him, had thought proper to avail himself of the privilege proffered by the act of Congress; and whether his title could be affected by the revival of the same law ten years afterwards. If Bringier's front tract had been situated on a straight part of the river, and the side lines parallel to each other, and he had been the only purchaser or claimant, there can be no question but that he would have acquired a good title, and it would have been the

No. 3. duty of the surveying department to lay it out according to the directions of the statute. Whatever may be the position of the front tract, the owner has, under the statute, a right to purchase a quan-

tity equal in superficies to his front tract; subject to the operations of the surveyor, if his neighbours, situated on the same point, avail themselves of the same privilege. When Congress speaks of the front tract, they speak of the owner; but the surveyor is to act only on the land *claimed* under the law, and those who deliver a notice of their intention to accept the offer, are spoken of as claimants. If there be but one claimant, it is equally the duty of the surveyor to lay off the land purchased by him. We therefore consider the right of Bringier, as a claimant under the act of Congress, although contingent or defeasable during the existence of the law, while his neighbours had, also, a right to claim the privilege of the act, by complying with its conditions, as having become complete and vested by this expiration of the law. By suffering the law to expire, without delivering their notice, the right on the part of the plaintiffs to purchase, was forfeited by the express terms of the act; and it is difficult to conceive how it could be afterwards revived, to the prejudice of the defendant, by any legislature authority, much less by the operations of the surveying department. But it is contended, that the last clause of the section reserves the land not claimed under the law to be sold like other public lands, which was not and could not have been done in this case. To this it may be answered, that by that part of the section, not only did those who had not purchased within the time limited, forfeit their *right to* buy, but those who *had* purchased, according to the terms of credit then allowed, and had failed to pay, forfeited the land itself. The last words, therefore, amount, according to our understanding of them, to a declaration, that the lands thus purchased and not paid for, shall not only revert to the domain, but that they shall so revert, ipso facto, by the not payment of the price, so completely as to be liable to sale or private entry. If it had been the intention of Congress merely to declare that the privilege should cease with the law, and be forfeited, such expression would have been unnecessary, if not absurd; because the land itself, in the case supposed, would never have ceased to belong to the domain, and a declaration that the lands might thereafter be purchased by any other person in the same manner, and on the same terms, as are, or may be, provided by law for the sale of other public lands," would have been, to say the least of it, a very idle declaration, inasmuch [as] the lands were already liable to be sold according to law.

No. 4.

No. 4, continued.

But it is further urged on the part of the appellants, that the public lands cannot be sold without a previous survey, and that the officers of the Government are not authorised to sell to any individual at private sale, until he produces to the register a memorandum describing the tract he wishes to purchase by its legal subdivisions, and that no title can exist until this mode has been pursued. They cite its act of Congress of 1810 in support of this position.

Such is undoubtedly the general law which regulates the sale of the public lands. But the statute in question create clearly an exception to that rule by authorizing the sale of the back lands in tracts of different quantities and irregular shapes, and which require to be surveyed and laid off after the sale. The act declares that the date of the purchase

shall be the date of the notice, thereby clearly indicating that the title of the purchaser shall rest independently of any survey, and at the time of filing the notice, subject, as we have already observed, to a reduction in quantity in case of other claimants, and an insufficiency of land for all.

It is again urged that Bringier's application contained no legal statement or description of the situation and extent of land, which he wished to purchase; that there was a plat of survey of the tracts which the front proprietors were entitled to purchase. In support of this position, were are referred to a decision of the Supreme Court of the United States, relative to the location or laying of land warrants in Kentucky, in which it was held, that the calls must be so specific and precise as to enable others to locate the adjacent vacant lands. In deciding in the case now before us, upon the sufficiency of Bringier's notice or application, we cannot look beyond the statute under which it was made, and by which it must be governed; no particular form is prescribed, much less does it require the exhibition of a survey. Any description which would show that the applicant or claimant is a front proprietor, and entitled to the benefit of the act would, in our opinion, suffice.

No. 5.—It is lastly contended, that the decision of the surveyor general, whose duty it is to apportion the public lands among the different claimants under the pre-emption laws, approved by the public functionaries to whom he is responsible, cannot be enquired into in courts of justice, and is final between the parties; and it is shewn that the operations of the surveyor general, by which the purchase of Bringier's has been restricted and curtailed, in order to give a portion of the land to the plaintiffs, has been approved by the Secretary of the Treasury, and the previous survey and location of his purchase by Righter, a principal deputy surveyor, has been disregarded. Such pretensions do not appear to have been entertained by the Treasury Department, for in the report of the Commissioner of the General Land Office, which is approved by the Secretary, it is expressly conceded that a decision of the Treasury Department adverse to Bringier would not preclude him from seeking a remedy in the courts. Indeed it appears to us manifest that the authority of the surveyor general to apportion the lands, under the statute, is confined to the cases of a conflict between different claimants under the same law, and that he, as well as the Treasury Department itself, is incompetent to decide upon the validity of a title acquired by purchase, or upon the only question which this case presents, to wit: whether the plaintiffs, by neglecting to avail themselves of the privilege offered by the act of Congress, did not forfeit all pretensions to the lands lying back of and adjacent to the plantation of Bringier, to an extent not exceeding that of his front tract, and extending back forty arpens from his back line. Congress itself is incompetent under the constitution to destroy the vested right and title of a purchaser of the public lands, and how can the surveyor general, under an authority to apportion the land, applicable to that object, among several claimants, under the same law, while the extent of their purchase is yet doubtful and contingent, assume to take any part of the land purchased by Bringier under the act of 1820,